ISSN 1725-2423

Official Journal of the European Union

C 13

English edition

Information and Notices

Volume 54

15 January 2011

Notice No | Contents | Page

EN

Price:
EUR 3

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

European Union Civil Service Tribunal

EN

(Continued overleaf)

EN

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 13/01)

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

OJ C 346, 18.12.2010

Past publications

OJ C 328, 4.12.2010

OJ C 317, 20.11.2010

OJ C 301, 6.11.2010

OJ C 288, 23.10.2010

OJ C 274, 9.10.2010

OJ C 260, 25.9.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 9 November 2010 (reference for a preliminary ruling from the Budapesti II. és III. Kerületi Bíróság — Republic of Hungary) — VB Pénzügyi Lízing Zrt. v Ferenc Schneider

(Case C-137/08) [1]

(Directive 93/13/EEC — Unfair terms in consumer contracts — Criteria for assessment — Examination by the national court of its own motion of the unfairness of a term conferring jurisdiction — Article 23 of the Statute of the Court of Justice)

(2011/C 13/02)

Language of the case: Hungarian

Referring court

Budapesti II. és III. Kerületi Bíróság

Parties to the main proceedings

Applicant: VB Pénzügyi Lízing Zrt.

Defendant: Ferenc Schneider

Re:

Reference for a preliminary ruling — Budapesti II. és III. Kerületi Bíróság — Interpretation of the first paragraph of Article 23 of the Protocol on the Statute of the Court of Justice and of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, 29) — Contractual term granting jurisdiction to a judicial body which is located closer to the registered office of the service provider than the place of establishment of the consumer — Power of the national courts to assess, of their own motion, the unfair nature of a term granting jurisdiction in the context of the examination of its jurisdiction — Criteria for the assessment of the unfair nature of the term

Operative part of the judgment

1. *The first paragraph of Article 23 of the Statute of the Court of Justice does not preclude a provision of national law which provides that the court which initiates a preliminary reference procedure is at the same time to inform, of its own motion, the Minister with responsibility for Justice in the Member State concerned;*

2. *Article 267 TFEU must be interpreted as meaning that the jurisdiction of the Court of Justice of the European Union extends to the interpretation of the concept of 'unfair term' used in Article 3(1) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts and in the annex thereto, and to the criteria which the national court may or must apply when examining a contractual term in the light of the provisions of that Directive, bearing in mind that it is for that court to determine, in the light of those criteria, whether a particular contractual term is actually unfair in the circumstances of the case;*

3. *The national court must investigate of its own motion whether a term conferring exclusive territorial jurisdiction in a contract concluded between a seller or supplier and a consumer, which is the subject of a dispute before it, falls within the scope of Directive 93/13 and, if it does, assess of its own motion whether such a term is unfair.*

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[1] OJ C 183, 19.7.2008.

Judgment of the Court (First Chamber) of 18 November 2010 — European Commission v Portuguese Republic

(Case C-458/08) [1]

(Failure of a Member State to fulfil obligations — Infringement of Article 49 EC — Construction sector — Authorisation required in order to carry on activity in that sector — Justification)

(2011/C 13/03)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: E. Traversa and P. Guerra e Andrade, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes and F. Nunes dos Santos, acting as Agents)

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

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 49 EC — Construction sector — Licence required in order to carry on activity in that sector

Operative part of the judgment

The Court:

1. *Declares that, by requiring providers of building services established in another Member State to satisfy all the requirements imposed by the national scheme at issue, and in particular by Decree-Law No 12/2004 of 9 January 2004, in order to obtain authorisation to exercise, in Portugal, an activity in the construction sector, thereby precluding the possibility of account being duly taken of equivalent obligations to which such providers are subject in the Member State in which they are established, or of the verifications already carried out in that regard by the authorities of that Member State, the Portuguese Republic has failed to fulfil its obligations under Article 49 EC;*

2. *Orders the Portuguese Republic to pay the costs;*

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

([1]) OJ C 327, 20.12.2008.

Judgment of the Court (Grand Chamber) of 9 November 2010 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG v 'Österreich' -Zeitungsverlag GmbH

(Case C-540/08) ([1])

(Directive 2005/29/EC — Unfair commercial practices — National legislation laying down a prohibition in principle on commercial practices making the offer of bonuses to consumers subject to the purchase of goods or services)

(2011/C 13/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co. KG

Defendant: 'Österreich' -Zeitungsverlag GmbH

Re:

Preliminary ruling — Oberster Gerichtshof (Austria) — Interpretation of Articles 3(1) and 5(2) and (5) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (OJ 2005 L 149, p. 22) — National legislation prohibiting publishers of periodicals from announcing, offering or giving bonuses to consumers free of charge with periodicals and from offering such bonuses with goods sold or services supplied, without taking into account whether the commercial practice in question is misleading or aggressive — Legislation with the objective not only of protecting consumers but also of maintaining the diversity of the press and protecting weaker competitors — Concept of unfair commercial practice

Operative part of the judgment

1. *Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('the Unfair Commercial Practices Directive') must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which lays down a general prohibition on sales with bonuses and is not only designed to protect consumers but also pursues other objectives;*

2. *The possibility of participating in a prize competition, linked to the purchase of a newspaper, does not constitute an unfair commercial practice within the meaning of Article 5(2) of Directive 2005/29, simply on the ground that, for at least some of the consumers concerned, that possibility of participating in a competition represents the factor which determines them to buy that newspaper.*

([1]) OJ C 69, 21.03.2009.

Judgment of the Court (First Chamber) of 11 November 2010 — European Commission v Portuguese Republic

(Case C-543/08) ([1])

(Failure of a Member State to fulfil obligations — Articles 56 EC and 43 EC — Free movement of capital — Golden shares in EDP — Energias de Portugal held by the Portuguese State — Restrictions on the acquisition of holdings and participation in the management of a privatised company)

(2011/C 13/05)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: G. Braun, P. Guerra e Andrade and M. Teles Romão, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, Agent, C. Botelho Moniz and P. Gouveia e Melo, advogados)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 43 EC and 56 EC — Golden shares held by the Portuguese State in the company EDP — Energias de Portugal

Operative part of the judgment

The Court:

1. *Declares that by maintaining for the Portuguese State and other public bodies special rights in EDP — Energias de Portugal such as those provided for in this instance by Law No 11/90 of 5 April 1990 concerning the framework law on privatisations (Lei No 11/90, Lei Quadro das Privatizações), by Decree-Law No 141/2000 of 15 July 2000 approving the fourth phase of the re-privatisation of the share capital of EDP — Electricidade de Portugal SA, and by the articles of association of that company, allocated in connection with golden shares held by the Portuguese State in the share capital of that company, the Portuguese Republic has failed to fulfil its obligations under Article 56 EC.*

2. *Orders the Portuguese Republic to pay the costs.*

([1]) OJ C 19, 24.01.2009.

Judgment of the Court (Seventh Chamber) of 11 November 2010 — Transportes Evaristo Molina, SA v European Commission

(Case C-36/09 P) ([1])

(Appeal — Agreements, decisions and concerted practices — Service station market in Spain — Long-term exclusive fuel supply agreements — Commission decision — Right of purchase granted to certain service stations — Conditions of supply by Repsol — List of the service stations concerned — Action for annulment — Time-limits for commencing proceedings — Starting point)

(2011/C 13/06)

Language of the case: Spanish

Parties

Appellant: Transportes Evaristo Molina, SA (represented by: A. Hernández Pardo, S. Beltrán Ruiz and M.L. Ruiz Ezquerra, abogados)

Other party to the proceedings: European Commission (represented by: E. Gippini Fournier, acting as Agent)

Intervener in support of the defendant: Repsol Comercial de Productos Petrolíferos SA (represented by: F. Lorente Hurtado and P. Vidal Martínez, abogados)

Re:

Appeal brought against the order of the Court of First Instance (Fourth Chamber) of 14 November 2008 in Case T-45/08 *Transportes Evaristo Molina* v *Commission* dismissing the action for annulment of Commission Decision 2006/446/EC of 12 April 2006 relating to a proceeding pursuant to Article 81 EC (Case COMP/B-1/38.348 — Repsol CPP) (summary published in OJ 2006 L 176, p. 104) making binding the undertakings given by Repsol CPP, adopted in accordance with Article 9 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 [EC] and 82 [EC] (OJ 2003 L 1, p. 1)

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Transportes Evaristo Molina, SA to pay the costs.*

([1]) OJ C 82, 4.4.2009.

Judgment of the Court (Grand Chamber) of 9 November 2010 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Bundesrepublik Deutschland v B (C-57/09), D (C-101/09)

(Joined Cases C-57/09 and C-101/09) ([1])

(Directive 2004/83/EC — Minimum standards for the grant of refugee status or of subsidiary protection — Article 12 — Exclusion from refugee status — Article 12(2)(b) and (c) — Notion of 'serious non-political crime' — Notion of 'acts contrary to the purposes and principles of the United Nations' — Membership of an organisation involved in terrorist acts — Subsequent inclusion of that organisation on the list of persons, groups and entities which forms the Annex to Common Position 2001/931/CFSP — Individual responsibility for part of the acts committed by that organisation — Conditions — Right of asylum by virtue of national constitutional law — Compatibility with Directive 2004/83/EC)

(2011/C 13/07)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Bundesrepublik Deutschland

Defendant: B (C-57/09), D (C-101/09)

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht Leipzig — Interpretation of Articles 3 and 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ 2004 L 304, p. 12) — National of a non-member country who in his country of origin actively supported the armed struggle of an organisation included in the list of terrorist organisations in the annex to Council Common Position 2002/462/CFSP of 17 June 2002 (OJ 2002 L 160, p. 32) and has been tortured and twice sentenced to life imprisonment in that country — Application of the provisions of Directive 2004/83/EC excluding the grant of refugee status to a person who has carried on terrorist activity in his country of origin — Power of the Member States to grant refugee status on the basis of their constitutional provisions in the face of a ground of exclusion from that status under that directive

Operative part of the judgment

1. *Article 12(2)(b) and (c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted must be interpreted as meaning that:*

   — *the fact that a person has been a member of an organisation which, because of its involvement in terrorist acts, is on the list forming the Annex to Common Position 2001/931/CFSP on the application of specific measures to combat terrorism and that that person has actively supported the armed struggle waged by that organisation does not automatically constitute a serious reason for considering that that person has committed 'a serious non-political crime' or 'acts contrary to the purposes and principles of the United Nations';*

   — *the finding, in such a context, that there are serious reasons for considering that a person has committed such a crime or has been guilty of such acts is conditional on an assessment on a case-by-case basis of the specific facts, with a view to determining whether the acts committed by the organisation concerned meet the conditions laid down in those provisions and whether individual responsibility for carrying out those acts can be attributed to the person concerned, regard being had to the standard of proof required under Article 12(2) of the directive.*

2. *Exclusion from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on the person concerned representing a present danger to the host Member State.*

3. *The exclusion of a person from refugee status pursuant to Article 12(2)(b) or (c) of Directive 2004/83 is not conditional on an assessment of proportionality in relation to the particular case.*

4. *Article 3 of Directive 2004/83 must be interpreted as meaning that Member States may grant a right of asylum under their national law to a person who is excluded from refugee status pursuant to Article 12(2) of the directive, provided that that other kind of protection does not entail a risk of confusion with refugee status within the meaning of the directive.*

([1]) OJ C 129, 6.6.2009.

Judgment of the Court (Second Chamber) of 18 November 2010 (reference for a preliminary ruling from the Regeringsrätten — Sweden) — X v Skatteverket

(Case C-84/09) ([1])

(VAT — Directive 2006/112/EC — Article 2, first paragraph of Article 20 and Article 138(1) — Intra-Community acquisition of a new sailing boat — Immediate use of the goods purchased in the Member State of acquisition or in another Member State before transporting it to its final destination — Time-limit within which transport of goods to place of destination commences — Maximum duration of transport — Relevant point in time for determining whether a means of transport is new for the purposes of taxation thereof)

(2011/C 13/08)

Language of the case: Swedish

Referring court

Regeringsrätten

Parties to the main proceedings

Applicant: X

Defendant: Skatteverket

Re:

Reference for a preliminary ruling — Regeringsrätten — Interpretation of Articles 2, 20 and 138 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Purchase of a new sailing boat in Member State A by an individual who is resident in Member State B for the purpose of its immediate private use by the individual in Member State A or in other Member States for a certain period before the sailing boat is transported to its final destination in Member State B — Period within which the transport of the goods to the place of destination must begin — Maximum duration of that transport — Relevant time at which to decide on whether a means of transport is new for the purposes of taxation

Operative part of the judgment

1. *The first paragraph of Article 20 and Article 138(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, are to be interpreted as meaning that the classification of a transaction as an intra-Community supply or acquisition cannot be made contingent on the observance of any time period during which the transport of the goods in question from the Member State of supply to the Member State of destination must be commenced or completed. In the specific case of the acquisition of a new means of transport within the meaning of Article 2(1)(b)(ii) of that directive, the determination of the intra-Community nature of the transaction must be made through an overall assessment of all the objective circumstances and the purchaser's intentions, provided that it is supported by objective evidence which make it possible to identify the Member State in which final use of the goods concerned is envisaged.*

2. *The assessment of whether a means of transport which is the subject-matter of an intra-Community acquisition is new within the meaning of Article 2(2)(b) of Directive 2006/112 must be made at the time of the supply of the goods in question by the vendor to the purchaser.*

([1]) OJ C 90, 18.04.2009.

Judgment of the Court (Grand Chamber) of 9 November 2010 (reference for a preliminary ruling from the Verwaltungsgericht Wiesbaden — Germany) — Volker und Markus Schecke GbR (C-92/09), Hartmut Eifert (C-93/09) v Land Hessen

(Joined Cases C-92/09 and C-93/09) ([1])

(Protection of natural persons with regard to the processing of personal data — Publication of information on beneficiaries of agricultural aid — Validity of the provisions of European Union law providing for that publication and laying down detailed rules for such publication — Charter of Fundamental Rights of the European Union — Articles 7 and 8 — Directive 95/46/EC — Interpretation of Articles 18 and 20)

(2011/C 13/09)

Language of the case: German

Referring court

Verwaltungsgericht Wiesbaden

Parties to the main proceedings

Applicants: Volker und Markus Schecke GbR (C-92/09), Hartmut Eifert (C-93/09)

Defendant: Land Hessen

Joined party: Bundesanstalt für Landwirtschaft und Ernährung

Re:

Preliminary ruling — Verwaltungsgericht Wiesbaden — Validity of Articles 42(8b) and 44a 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), Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Council Regulation (EC) No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) (OJ 2008 L 76, p. 28), and Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54) — Interpretation of Article 7, the second indent of Article 18(2), and Article 20 of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ 1995 L 281, p. 31) — Processing of personal data of beneficiaries of the European agricultural funds consisting in publishing the data on a website with a search tool — Validity in the light of the right to protection of personal data of the provisions of Community law prescribing that publication and laying down the detailed rules for publication — Conditions under which such publication may be carried out

Operative part of the judgment

1. *Articles 42(8b) and 44a of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy, as amended by Council Regulation (EC) No 1437/2007 of 26 November 2007, and Commission Regulation (EC) No 259/2008 of 18 March 2008 laying down detailed rules for the application of Regulation No 1290/2005 as regards the publication of information on the beneficiaries of funds deriving from the European Agricultural Guarantee Fund (EAGF) and the European Agricultural Fund for Rural Development (EAFRD) are invalid in so far as, with regard to natural persons who are beneficiaries of EAGF and EAFRD aid, those provisions impose an obligation to publish personal data relating to each beneficiary without drawing a distinction based on relevant criteria such as the periods during which those persons have received such aid, the frequency of such aid or the nature and amount thereof.*

2. *The invalidity of the provisions of European Union law mentioned in paragraph 1 of this operative part does not allow any action to be brought to challenge the effects of the publication of the lists of beneficiaries of EAGF and EAFRD aid carried out by the national authorities on the basis of those provisions during the period prior to the date on which the present judgment is delivered.*

3. *The second indent of Article 18(2) of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data must be interpreted as not placing the personal data protection official under an obligation to keep the register provided for by that provision before an operation for the processing of personal data, such as that resulting from Articles 42(8b) and 44a of Regulation No 1290/2005, as amended by Regulation No 1437/2007, and from Regulation No 259/2008, is carried out.*

4. *Article 20 of Directive 95/46 must be interpreted as not imposing an obligation on the Member States to make the publication of information resulting from Articles 42(8b) and 44a of Regulation No 1290/2005, as amended by Regulation No 1437/2007, and from Regulation No 259/2008 subject to the prior checks for which that Article 20 provides.*

([1]) OJ C 129, 6.6.2009
OJ C 119, 16.5.2009

Judgment of the Court (First Chamber) of 18 November 2010 (reference for a preliminary ruling from the Rechtbank van eerste aanleg te Dendermonde — Belgium) — Criminal proceedings against V. W. Lahousse, Lavichy BVBA

(Case C-142/09) ([1])

(Directives 92/61/EEC and 2002/24/EC — Type-approval of two- or three-wheel motor vehicles — Vehicles intended for use in competition, on roads or in off-road conditions — National legislation prohibiting the manufacture, marketing and use of equipment designed to increase the engine power and/or speed of mopeds)

(2011/C 13/10)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Dendermonde

Parties in the main proceedings

V. W. Lahousse, Lavichy BVBA

Re:

Reference for a preliminary ruling — Rechtbank van eerste aanleg te Dendermonde (Belgium) — Interpretation of Articles 1(1), 12 and 15(2) of Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two or three-wheel motor vehicles and repealing Council Directive 92/61/EEC (OJ 2002 L 124, p. 1) — Exception in respect of vehicles intended for use in competition, on roads or in off-road conditions — National legislation disregarding that exception

Operative part of the judgment

Council Directive 92/61/EEC of 30 June 1992 relating to the type-approval of two or three-wheel motor vehicles, and Directive 2002/24/EC of the European Parliament and of the Council of 18 March 2002 relating to the type-approval of two or three-wheel motor vehicles and repealing Directive 92/61 are to be construed as meaning that, where a vehicle or a component or separate technical unit thereof does not qualify for the type-approval procedure established by those directives, on the ground that it does not come within their scope, the provisions of those directives do not prevent a Member State from introducing, in its domestic law and in relation to such vehicle, component or separate technical unit, a similar mechanism for recognising the checks carried out by other Member States. In any event, such legislation must comply with EU law, in particular Articles 34 TFEU and 36 TFEU.

([1]) OJ C 153, 4.7.2009.

Judgment of the Court (First Chamber) of 11 November 2010 (reference for a preliminary ruling from the Verwaltungsgericht Schwerin (Germany)) — André Grootes v Amt für Landwirtschaft Parchim

(Case C-152/09) ([1])

(Common agricultural policy — Integrated administration and control system for certain aid schemes — Single payment scheme — Regulation (EC) No 1782/2003 — Calculation of payment entitlements — Article 40(5) — Farmers who were under agri-environmental commitments during the reference period — Article 59(3) — Regional implementation of the single payment scheme — Article 61 — Different per-unit values for hectares under permanent pasture and for any other hectare eligible for aid)

(2011/C 13/11)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: André Grootes

Defendant: Amt für Landwirtschaft Parchim

Re:

Reference for a preliminary ruling — Verwaltungsgericht Schwerin — Interpretation of Article 40(5) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1) — Circumstances in which farmers who were under agri-environmental commitments during the reference period are entitled to request that the reference amount be calculated on the basis of the year preceding the year of participation in those commitments

Operative part of the judgment

1. *Article 40(5) of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) No 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, as amended by Council Regulation (EC) No 319/2006 of 20 February 2006, must be interpreted as meaning that where, in the Member State in question, different per-unit values were fixed for hectares under pasture and for any other hectare eligible for aid under Article 61 of that regulation, a farmer who, on the reference date specified in that article, was under agri-environmental commitments pursuant to Council Regulation (EEC) No 2078/92 of 30 June 1992 on agricultural production methods compatible with the requirements of the protection of the environment and the maintenance of the countryside, forming part of seamlessly ongoing agri-environmental commitments which had the objective of converting arable lands into permanent pastureland, is entitled to request that the entitlements referred to in the first subparagraph of Article 59(3) of Regulation No 1782/2003, as amended by Regulation No 319/2006, be calculated on the basis of the per-unit values fixed for eligible hectares other than hectares under pasture;*

2. *Article 40(5) of Regulation No 1782/2003, as amended by Regulation No 319/2006, read in conjunction with Article 61 of that regulation, as amended, must be interpreted as meaning that only where there is a causal link between the change of use of an area from arable land to permanent pastureland and participation in an agri-environmental measure may the fact that that area was being used as permanent pastureland, on the reference date specified in Article 61 of that regulation, as amended, be disregarded for the purposes of calculating payment entitlements;*

3. *Article 40(5) of Regulation No 1782/2003, as amended by Regulation No 319/2006, read in conjunction with Article 61 of that regulation, as amended, must be interpreted as meaning that its application is not contingent on the farmer who makes the single payment application also being the person who introduced the change of use of the area in question.*

([1]) OJ C 167, 18.07.2009.

Judgment of the Court (First Chamber) of 18 November 2010 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Finanzamt Leverkusen v Verigen Transplantation Service International AG

(Case C-156/09) ([1])

(Sixth VAT Directive — Article 13(A)(1)(c) — Exemptions for activities in the public interest — Provision of medical care — Removal and multiplication of cartilage cells for the purpose of reimplantation in the patient)

(2011/C 13/12)

Language of the case: German

Referring court

Bundesfinanzhof — Germany

Parties to the main proceedings

Applicant: Finanzamt Leverkusen

Defendant: Verigen Transplantation Service International AG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 13A(1)(c) and the first paragraph of Article 28bF of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Removal of joint cartilage cells from cartilage material taken from a human being by persons established in other Member States and subsequent multiplication of those cells with a view to their being implanted in a patient by the same persons — Determination of the place where services are supplied — Exemption of those services as 'the provision of medical care in the exercise of the medical and paramedical professions'

Operative part of the judgment

Article 13(A)(1)(c) 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, as amended by Council Directive 95/7/EC of 10 April 1995, must be interpreted as meaning that the removal of joint cartilage cells from cartilage material taken from a human being and the subsequent multiplication of those cells for reimplantation for therapeutic purposes constitute 'provision of medical care' in accordance with that provision.

([1]) OJ C 180, 01.08.2009.

Judgment of the Court (Fourth Chamber) of 18 November 2010 (reference for a preliminary ruling from the Tribunal de commerce de Bourges — France) — Lidl SNC v Vierzon Distribution SA

(Case C-159/09) ([1])

(Directives 84/450/EEC and 97/55/EC — Conditions under which a comparative advertising is permitted — Price comparison based on selection of food products marketed by two competing retail store chains — Goods meeting the same needs or intended for the same purpose — Misleading advertising — Comparison based on a verifiable feature)

(2011/C 13/13)

Language of the case: French

Referring court

Tribunal de commerce de Bourges

Parties to the main proceedings

Applicant: Lidl SNC

Defendant: Vierzon Distribution SA

Re:

Reference for a preliminary ruling — Tribunal de commerce de Bourges — Interpretation of Article 3a of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising (OJ 1984 L 250, p. 17), as amended by Directive 97/55/EC of European Parliament and of the Council of 6 October 1997 (OJ 1997 L 290, p. 18) — Conditions under which comparative advertising is permitted — Comparison of prices charged by a competing chain of stores — Goods meeting the same needs or intended for the same purpose

Operative part of the judgment

Article 3a(1)(b) of Council Directive 84/450/EEC of 10 September 1984 concerning misleading and comparative advertising, as amended by Directive 97/55/EC of the European Parliament and of the Council of 6 October 1997, is to be interpreted as meaning that the fact alone that food products differ in terms of the extent to which consumers would like to eat them and the pleasure to be derived from consuming them, according to the conditions and place of production, their ingredients and who produced them, cannot preclude the possibility that the comparison of such products may meet the requirement laid down in that provision that the products compared meet the same needs or are intended for the same purpose, that is to say, that they display a sufficient degree of interchangeability.

Article 3a(1)(a) of Directive 84/450, as amended by Directive 97/55, is to be interpreted as meaning that an advertisement such as that at issue in the main proceedings may be misleading, in particular if:

— *it is found, in the light of all the relevant circumstances of the particular case, in particular the information contained in or omitted from the advertisement, that the decision to buy on the part of a significant number of consumers to whom the advertisement is addressed may be made in the mistaken belief that the selection of goods made by the advertiser is representative of the general level of his prices as compared with those charged by his competitor and that such consumers will therefore make savings of the kind claimed by the advertisement by regularly buying their everyday consumer goods from the advertiser rather than the competitor, or in the mistaken belief that all of the advertiser's products are cheaper than those of his competitor, or*

— *it is found that, for the purposes of a comparison based solely on price, food products were selected which, nevertheless, have different features capable of significantly affecting the average consumer's choice, without such differences being apparent from the advertising concerned.*

Article 3a(1)(c) of Directive 84/450, as amended by Directive 97/55, is to be interpreted as meaning that the condition of verifiability set out in that provision requires, in the case of an advertisement, such as that at issue in the main proceedings, which compares the prices of two selections of goods, that it must be possible to identify the goods in question on the basis of information contained in the advertisement.

([1]) OJ C 180, 01.08.2009.

Judgment of the Court (Fourth Chamber) of 11 November 2010 — European Commission v Italian Republic

(Case C-164/09) ([1])

(Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection for wild birds — Hunting)

(2011/C 13/14)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Zadra and D. Recchia, acting as Agents)

Defendant: Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Fiengo, lawyer)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Derogations from the system of protection for wild birds — Veneto Region

Operative part of the judgment

The Court:

1. *Declares that, since the Veneto Region has adopted and applied legislation authorising derogations from the system of protection for wild birds which fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under Article 9 of that directive;*

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

([1]) OJ C 180, 1.8.2009.

Judgment of the Court (Fourth Chamber) of 18 November 2010 — European Commission v Ireland

(Case C-226/09) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/18/EC — Public procurement procedures — Award of a contract for interpretation and translation services — Services falling within the ambit of Annex II B of the Directive — Services not subject to all the requirements of the Directive — Weighting of the award criteria determined after tenders have been submitted — Weighting altered following an initial review of the tenders submitted — Compliance with the principle of equal treatment and the obligation of transparency)

(2011/C 13/15)

Language of the case: English

Parties

Applicant: European Commission (represented by: M. Konstantinidis and A.-A. Gilly, Agents)

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

Re:

Failure of a Member State to fulfil obligations — Public procurement procedures — Award of a contract for interpretation and translation services — Services not subject to all the requirements of Directive 2004/18/EC of the European Parliament and 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) — Weighting of the award criteria after the submission of tenders — Principles of equal treatment as between tenderers and transparency

Operative part of the judgment

The Court:

1. *Declares that, by altering the weighting of the award criteria for a contract for the provision of interpretation and translation services following an initial review of the tenders submitted, Ireland has failed to fulfil its obligations under the principle of equal treatment and the consequent obligation of transparency, as interpreted by the Court of Justice of the European Union;*

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

3. *Orders the European Commission and Ireland to bear their own costs.*

([1]) OJ C 220, 12.09.2009.

Judgment of the Court (Second Chamber) of 11 November 2010 (reference for a preliminary ruling from the Bundespatentgericht (Germany)) — Hogan Lovells International LLP v Bayer CropScience AG

(Case C-229/09) ([1])

(Patent law — Plant-protection products — Regulation (EC) No 1610/96 — Directive 91/414/EEC — Supplementary protection certificate for plant protection products — Grant of a certificate for a product which had obtained a provisional marketing authorisation)

(2011/C 13/16)

Language of the case: German

Referring court

Bundespatentgericht

Parties to the main proceedings

Applicant: Hogan Lovells International LLP

Defendant: Bayer CropScience AG

Re:

Reference for a preliminary ruling — Bundespatentgericht — Interpretation of Article 3(1)(b) of Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products (OJ 1996 L 198, p. 30) — Conditions governing the acquisition of a supplementary protection certificate — Possibility of having such a certificate issued on the basis of a previous marketing authorisation issued pursuant to Article 8(1) of Directive 91/414/EEC — Active substance iodosulfuron

Operative part of the judgment

Article 3(1)(b) of Regulation (EC) No 1610/96 of the European Parliament and of the Council of 23 July 1996 concerning the creation of a supplementary protection certificate for plant protection products must be interpreted as not precluding a supplementary protection certificate from being issued for a plant protection product in respect of which a valid marketing authorisation has been granted pursuant to Article 8(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, as amended by Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005.

([1]) OJ C 220, 12.09.2009.

Judgment of the Court (Second Chamber) of 11 November 2010 (reference for a preliminary ruling from the Augstākās tiesas Senāts (Latvia)) — Dita Danosa v LKB Līzings SIA

(Case C-232/09) ([1])

(Social policy — Directive 92/85/EEC — Measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding — Articles 2(a) and 10 — Concept of 'pregnant worker' — Prohibition on the dismissal of a pregnant worker during the period from the beginning of pregnancy to the end of maternity leave — Directive 76/207/EEC — Equal treatment for men and women — Member of the Board of Directors of a capital company — National legislation permitting the dismissal of a Board Member without any restrictions)

(2011/C 13/17)

Language of the case: Latvian

Referring court

Augstākās tiesas Senāts

Parties to the main proceedings

Applicant: Dita Danosa

Defendant: LKB Līzings SIA

Re:

Reference for a preliminary ruling — Augstākās tiesas Senāts — Interpretation of Article 10 of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1992 L 348, p. 1) — Definition of worker — Compatibility of the directive of national legislation authorising the dismissal of a member of the board of directors of a capital company without any restriction taking account in particular of that member's pregnancy

Operative part of the judgment

1. *A member of a capital company's Board of Directors who provides services to that company and is an integral part of it must be regarded as having the status of worker for the purposes of Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), if that activity is carried out, for some time, under the direction or supervision of another body of that company and if, in return for those activities, the Board Member receives remuneration. It is for the national court to undertake the assessments of fact necessary to determine whether that is so in the case pending before it.*

2. *Article 10 of Directive 92/85 is to be interpreted as precluding national legislation, such as that at issue in the main proceedings, which permits a member of a capital company's Board of Directors to be removed from that post without restriction, where the person concerned is a 'pregnant worker' within the meaning of that directive and the decision to remove her was taken essentially on account of her pregnancy. Even if the Board Member concerned is not a 'pregnant worker' within the meaning of Directive 92/85, the fact remains that the removal, on account of pregnancy or essentially on account of pregnancy, of a member of a Board of Directors who performs duties such as those described in the main proceedings can affect only women and therefore constitutes direct discrimination on grounds of sex, contrary to Article 2(1) and (7) and Article 3(1)(c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002.*

([1]) OJ C 220, 12.9.2009.

Judgment of the Court (Eighth Chamber) of 18 November 2010 (reference for a preliminary ruling from the Finanzgericht Baden-Württemberg — Germany) — Alketa Xhymshiti v Bundesagentur für Arbeit — Familienkasse Lörrach

(Case C-247/09) ([1])

(Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons — Regulations (EEC) No 1408/71 and No 574/72 and Regulation (EC) No 859/2003 — Social security for migrant workers — Family benefits — National of a non member country working in Switzerland and residing with his spouse and children in a Member State of which the children are nationals)

(2011/C 13/18)

Language of the case: German

Referring court

Finanzgericht Baden-Württemberg

Parties to the main proceedings

Applicant: Alketa Xhymshiti

Defendant: Bundesagentur für Arbeit — Familienkasse Lörrach

Re:

Reference for a preliminary ruling — Finanzgericht Baden-Württemberg — Interpretation, first, of Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality (OJ 2003 L 124, p. 1) and, second, of Articles 2, 13 and 76 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1971 (II), p. 416) and of Article 10(1)(a) of Regulation (EEC) No 574/72 of the Council of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (OJ, English Special Edition 1972 (I), p. 159) — National of a non-member country working in the Swiss Confederation and residing with his spouse and children in a Member State of which the children are nationals — Refusal of the Member State of residence to grant family benefits — Compatibility of such a refusal of family benefits with the abovementioned Community provisions

Operative part of the judgment

1. *In the case in which a national of a non-member country is lawfully resident in a Member State of the European Union and works in Switzerland, Council Regulation (EC) No 859/2003 of 14 May 2003 extending the provisions of Regulation (EEC) No 1408/71 and Regulation (EEC) No 574/72 to nationals of third countries who are not already covered by those provisions solely on the ground of their nationality does not apply to that person in his Member State of residence, in so far as Regulation No 859/2003 is not among the Community acts mentioned in section A of Annex II to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons, signed at Luxembourg on 21 June 1999, which the parties to that agreement undertake to apply. Consequently, there is no obligation on the Member State of residence to apply Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006, and Council Regulation (EEC) No 574/72 of 21 March 1972 fixing the procedure for implementing Regulation (EEC) No 1408/71, in the version amended and updated by Regulation No 118/97, to that employee and his spouse;*

2. *Articles 2, 13 and 76 of Regulation No 1408/71 and Article 10(1)(a) of Regulation No 574/72 are irrelevant in respect of a national of a non-member country in the situation of the claimant in the main proceedings, in so far as her situation is governed by the legislation of the Member State of residence. The fact that that national's children are citizens of the European Union cannot, by itself, make the refusal to grant child allowance in the Member State of residence unlawful where, as is evident from the referring court's findings, the statutory conditions which must be satisfied for the purposes of such a grant are not fulfilled.*

([1]) OJ C 233, 26.9.2009.

Judgment of the Court (Second Chamber) of 18 November 2010 (reference for a preliminary ruling from the Rayonen sad Plovdiv — Bulgaria) — Vasil Ivanov Georgiev v Tehnicheski universitet — Sofia, filial Plovdiv

(Joined Cases C-250/09 and C-268/09) ([1])

(Directive 2000/78/EC — Article 6(1) — Prohibition of discrimination on grounds of age — University lecturers — National provision providing for the conclusion of fixed-term employment contracts beyond the age of 65 — Compulsory retirement at the age of 68 — Justification for differences in treatment on grounds of age)

(2011/C 13/19)

Language of the case: Bulgarian

Referring court

Rayonen sad Plovdiv

Parties to the main proceedings

Applicant: Vasil Ivanov Georgiev

Defendant: Tehnicheski universitet — Sofia, filial Plovdiv

Re:

Reference for a preliminary ruling — Rayonen sad Plovdiv — Interpretation of Article 6(1) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16) — National law permitting university professors who have reached the age of 65 to conclude an employment contract only for a fixed duration — National law fixing 68 as the final retirement age for university professors — Justification for differences of treatment on grounds of age

Operative part of the judgment

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, in particular Article 6(1), must be interpreted as meaning that it does not preclude national legislation, such as that at issue in the main

proceedings, under which university professors are compulsorily retired when they reach the age of 68 and may continue working beyond the age of 65 only by means of fixed-term one-year contracts renewable at most twice, provided that that legislation pursues a legitimate aim linked inter alia to employment and labour market policy, such as the delivery of quality teaching and the best possible allocation of posts for professors between the generations, and that it makes it possible to achieve that aim by appropriate and necessary means. It is for the national court to determine whether those conditions are satisfied.

Since this is a dispute between a public institution and an individual, if national legislation such as that at issue in the main proceedings does not satisfy the conditions set out in Article 6(1) of Directive 2000/78, the national court must decline to apply that legislation.

([1]) OJ C 220, 12.09.2009.

Judgment of the Court (Grand Chamber) of 16 November 2010 (reference for a preliminary ruling from the Oberlandesgericht Stuttgart — Germany) — Execution of a European arrest warrant issued in respect of Gaetano Mantello

(Case C-261/09) ([1])

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 3(2) — Ne bis in idem — Concept of the 'same acts' — Possibility for the executing judicial authority to refuse to execute a European arrest warrant — Final judgment in the issuing Member State — Possession of narcotic drugs — Trafficking in narcotic drugs — Criminal organisation)

(2011/C 13/20)

Language of the case: German

Referring court

Oberlandesgericht Stuttgart

Party in the main proceedings

Gaetano Mantello

Re:

Reference for a preliminary ruling — Oberlandesgericht Stuttgart — Interpretation of Article 3(2) of Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1) — Principle of 'ne bis in idem' at national level — Whether executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of conducting a criminal prosecution concerning acts some of which have already been subject to final disposal at trial in the issuing Member State — Concept of 'the same acts' — Situation in which all the facts on which the European arrest warrant is based were known to the investigating authorities of the issuing Member State at the time of the first criminal proceedings but were not used for tactical reasons relating to the investigation

Operative part of the judgment

The Court:

For the purposes of the issue and execution of a European arrest warrant, the concept of 'same acts' in Article 3(2) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States constitutes an autonomous concept of European Union law.

In circumstances such as those at issue in the main proceedings where, in response to a request for information within the meaning of Article 15(2) of that Framework Decision made by the executing judicial authority, the issuing judicial authority, applying its national law and in compliance with the requirements deriving from the concept of 'same acts' as enshrined in Article 3(2) of the Framework Decision, expressly stated that the earlier judgment delivered under its legal system did not constitute a final judgment covering the acts referred to in the arrest warrant issued by it and therefore did not preclude the criminal proceedings referred to in that arrest warrant, the executing judicial authority has no reason to apply, in connection with such a judgment, the ground for mandatory non-execution provided for in Article 3(2) of the Framework Decision.

([1]) OJ C 220, 12.9.2009.

Judgment of the Court (Fifth Chamber) of 18 November 2010 — Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) v Commission

(Case C-317/09 P) ([1])

(Appeal — Set-off of claims governed by separate legal orders — Application for repayment of sums advanced — Principle of litis denuntiatio — Rights of the defence and right to a fair hearing)

(2011/C 13/21)

Language of the case: French

Parties

Appellant: Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) (represented by: P.-P. Van Gehuchten, lawyer)

Other party to the proceedings: European Commission (represented by: E. Manhaeve and S. Delaude, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) of 10 June 2009 in Joined Cases T-396/05 and T-397/05 *ArchiMEDES* v *Commission*, by which the Court dismissed the action brought by the applicant at first instance seeking, first, annulment of the Commission's decisions to recover certain sums paid under a contract with the applicant and set-off of their reciprocal claims and, second, an order for the Commission to pay the remainder of the balance due under that contract — Non-applicability of the principle of *litis denuntiatio* — Rejection of the claim that the co-contractors are jointly and severally liable — Infringement of the rights of the defence and of the right to a fair hearing

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Architecture, microclimat, énergies douces — Europe et Sud SARL (ArchiMEDES) to pay the costs.*

([1]) OJ C 267, 07.11.09.

Judgment of the Court (Third Chamber) of 18 November 2010 — NDSHT Nya Destination Stockholm Hotell & Teaterpaket AB v European Commission

(Case C-322/09 P) ([1])

(Appeal — State aid — Complaint by a competitor — Admissibility — Regulation (EC) No 659/1999 — Articles 4, 10, 13 and 20 — Commission decision not to examine the complaint further — Classification by the Commission of measures as partially not constituting State aid and partially as existing aid compatible with the common market — Article 230 EC — Concept of 'an act open to challenge')

(2011/C 13/22)

Language of the case: English

Parties

Appellant: NDSHT Nya Destination Stockholm Hotell & Teaterpaket AB (represented by: M. Merola and L. Armati, avvocati)

Other party to the proceedings: European Commission (represented by: L. Flynn and T. Scharf, acting as Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (First Chamber) of 9 June 2009 in Case T-152/06 *NDSHT* v *Commission* by which the Court of First Instance declared inadmissible the action seeking the annulment of the Commission's decision, included in letters of 24 March and 28 April 2006, not to initiate the procedure provided for in Article 88(2) of the EC Treaty, in consequence of the applicant's complaint concerning aid allegedly granted to Stockholm Visitors Board AB by the Swedish authorities, in the form of various types of subsidy granted by the City of Stockholm — Acts which may be challenged

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 9 June 2009 in Case T-152/06 NDSHT v Commission;*

2. *Dismisses the objection of inadmissibility raised by the Commission of the European Communities before the General Court;*

3. *Refers the case back to the General Court of the European Union for judgment on the claim of NDSHT Nya Destination Stockholm Hotell & Teaterpaket AB for annulment of the decision of the Commission of the European Communities, contained in its letters of 24 March and 28 April 2006, not to continue its examination of the complaint that that company had lodged concerning allegedly unlawful State aid granted by the City of Stockholm to Stockholm Visitors Board AB;*

4. *Orders that the costs be reserved.*

([1]) OJ C 233, 26.6.2009, p. 12.

Judgment of the Court (Second Chamber) of 18 November 2010 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Pensionsversicherungsanstalt v Christine Kleist

(Case C-356/09) ([1])

(Social policy — Equal treatment of men and women in matters of employment and occupation — Directive 76/207/EEC — Article 3(1)(c) — National rules facilitating the dismissal of workers who have acquired the right to draw their retirement pension — Objective of promoting employment of younger persons — National rules setting the age conferring entitlement to a retirement pension at 60 years for women and 65 years for men)

(2011/C 13/23)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Appellant: Pensionsversicherungsanstalt

Respondent: Christine Kleist

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 3(1)(c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ 1976 L 39, p. 40), as amended by Directive 2002/73/EC — National rules setting the retirement age at 60 years for women and 65 years for men and facilitating the dismissal of employees when they reach that age — Dismissal by a public employer of a woman aged 60 years and entitled to retire, on the grounds of a desire to promote the employment of younger people

Operative part of the judgment

Article 3(1)(c) of Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions, as amended by Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002, must be interpreted as meaning that national rules which, in order to promote access of younger persons to employment, permit an employer to dismiss employees who have acquired the right to draw their retirement pension, when that right is acquired by women at an age five years younger than the age at which it is acquired by men, constitute direct discrimination on the grounds of sex prohibited by that directive.

([1]) OJ C 282, 21.11.2009.

Judgment of the Court (Sixth Chamber) of 18 November 2010 — European Commission v Kingdom of Spain

(Case C-48/10) ([1])

(Failure of a Member State to fulfil its obligations — Environment — Directive 2008/1/EC — Integrated pollution prevention and control — Conditions for the authorisation of existing installations — Obligation to ensure the operation of such installations in accordance with the requirements of the directive)

(2011/C 13/24)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: A. Alcover San Pedro, acting as Agent)

Defendant: Kingdom of Spain (represented by: F. Díez Moreno, acting as Agent)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 5(1) of Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control (OJ 2008 L 24, p. 8) — Installations which may have an effect on emissions into the air, water or soil and on pollution — Conditions for the authorisation of existing installations

Operative part of the judgment

The Court:

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

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

([1]) OJ C 100, 17.4.2010.

Judgment of the Court (Second Chamber) of 9 November 2010 (reference for a preliminary ruling from the Amtsgericht Stuttgart — Germany) — Bianca Purrucker v Guillermo Vallés Pérez

(Case C-296/10) ([1])

(Judicial cooperation in civil matters — Jurisdiction, recognition and enforcement of decisions in matrimonial matters and in the matters of parental responsibility — Regulation (EC) No 2201/2003 — Lis pendens — Substantive proceedings relating to rights of custody in respect of a child and application for provisional measures relating to rights of custody in respect of the same child)

(2011/C 13/25)

Language of the case: German

Referring court

Amtsgericht Stuttgart

Parties to the main proceedings

Applicant: Bianca Purrucker

Defendant: Guillermo Vallés Pérez

Re:

Reference for a preliminary ruling — Amtsgericht Stuttgart — Interpretation of Article 19(2) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 388, p. 1) — Jurisdiction of a court of a Member State to rule on the substance of an action relating to parental custody of a child who is habitually resident in that State, in a case where a court in another Member State has previously been seised, in a dispute between the same parties concerning parental custody of the same child, of an application for interim measures — Meaning of 'court first seised'

Operative part of the judgment

The provisions of Article 19(2) of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, are not applicable where a court of a Member State first seised for the purpose of obtaining measures in matters of parental responsibility is seised only for the purpose of its granting provisional measures within the meaning of Article 20 of that regulation and where a court of another Member State which has jurisdiction as to the substance of the matter within the meaning of the same regulation is seised second of an action directed at obtaining the same measures, whether on a provisional basis or as final measures.

The fact that a court of a Member State is seised in the context of proceedings to obtain interim relief or that a judgment is handed down in the context of such proceedings and there is nothing in the action brought or the judgment handed down which indicates that the court seised for the interim measures has jurisdiction within the meaning of Regulation No 2201/2003 does not necessarily preclude the possibility that, as may be provided for by the national law of that Member State, there may be an action as to the substance of the matter which is linked to the action to obtain interim measures and in which there is evidence to demonstrate that the court seised has jurisdiction within the meaning of that regulation.

Where, notwithstanding efforts made by the court second seised to obtain information by enquiry of the party claiming lis pendens, the court first seised and the central authority, the court second seised lacks any evidence which enables it to determine the cause of action of proceedings brought before another court and which serves, in particular, to demonstrate the jurisdiction of that court in accordance with Regulation No 2201/2003, and where, because of specific circumstances, the interest of the child requires the handing down of a judgment which may be recognised in Member States other than that of the court second seised, it is the duty of that court, after the expiry of a reasonable period in which answers to the enquiries made are awaited, to proceed with consideration of the action brought before it. The duration of that reasonable period must take into account the best interests of the child in the specific circumstances of the proceedings concerned.

([1]) OJ C 221, 14.08.2010.

Reference for a preliminary ruling from the Varhoven administrativen sad (Bulgaria) lodged on 7 July 2010 — Krasimir Asparuhov Estov, Monika Lucien Ivanova and 'KEMKO INTERNATIONAL' EAD v Ministerski savet na Republika Bulgaria

(Case C-339/10)

(2011/C 13/26)

Language of the case: Bulgarian

Referring court

Varhoven administrativen sad

Parties to the main proceedings

Applicants: Krasimir Asparuhov Estov, Monika Lyusien Ivanova and 'KEMKO INTERNATIONAL' EAD

Defendant: Ministerski savet na Republika Bulgaria

By order of 12 November 2010, the Court of Justice (Eight Chamber) held that it clearly has no jurisdiction to rule on the questions referred by the Varhoven administrativen sad (Bulgaria).

Reference for a preliminary ruling from Court of Appeal in Northern Ireland (United Kingdom) made on 29 September 2010 — Seaport (NI) Ltd, Magherafelt district Council, F P McCann (Developments) Ltd, Younger Homes Ltd, Heron Brothers Ltd, G Small Contracts, Creagh Concrete Products Ltd v Department of the Environment for Northern Ireland, Department of the Environment for Northern Ireland

(Case C-474/10)

(2011/C 13/27)

Language of the case: English

Referring court

Court of Appeal in Northern Ireland

Parties to the main proceedings

Applicants: Seaport (NI) Ltd, Magherafelt district Council, F P McCann (Developments) Ltd, Younger Homes Ltd, Heron Brothers Ltd, G Small Contracts, Creagh Concrete Products Ltd

Defendants: Department of the Environment for Northern Ireland, Department of the Environment for Northern Ireland

Questions referred

1. On the proper construction of Directive [2001/42] ([1]) where a State authority which prepares a plan falling within Article 3 is itself the authority charged with overall environmental responsibility in the Member State, is it open to the Member State to refuse to designate under Article 6(3) any authority to be consulted for the purposes of Articles 5 and 6?

2. On the proper construction of the Directive, where the authority preparing a plan falling within Article 3 is itself the authority charged with overall environmental responsibility in the Member State, is the Member State required to ensure that there is a consultation body which will be designated that is separate from that authority?

3. On the proper construction of the directive, may the requirement in Article 6(2) to the effect that the authorities referred to in Article 6(3) and the public referred to in 6(4) be given an early and effective opportunity to express their opinion 'within appropriate timeframes', be transposed by rules which provide that the authority responsible for preparing the plan shall authorise the time-limit in each case within which opinions shall be expressed, or must the rules transposing the directive themselves lay down a time-limit, or different time-limits for different circumstances, within which such opinions shall be expressed?

([1]) Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment OJ L 197, p. 30

Action brought on 8 October 2010 — European Commission v Federal Republic of Germany

(Case C-486/10)

(2011/C 13/28)

Language of the case: German

Parties

Applicant: European Commission (represented by: G. Wilms and C. Zadra, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— Declare that, by the fact that the City of Hamm directly awarded to the Lippeverband, without previously issuing a Europe-wide invitation to tender, service contracts of 30 July and 16 December 2003 for waste water collection and disposal and the servicing, operation, maintenance and monitoring of the sewage system of the City of Hamm, the Federal Republic of Germany has failed to fulfil its obligations under Article 8, in conjunction with Titles III to VI of Directive 92/50/EEC; ([1])

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The subject-matter of the present claim is the contracts for pecuniary interest for waste water collection and disposal and the servicing, operation, maintenance and monitoring of the sewage system of the City of Hamm, which that City concluded with a legally-constituted sewage group, the Lippeverband. The Lippeverband is a public-law body required to fulfil tasks prescribed by law in the field of water management. Around 25 % of its members are private undertakings. Under the contracts at issue, the Lippeverband was to have taken over the collection and disposal of waste water in the area of the City of Hamm on 1 January 2004, for which purpose the City set up a remuneration package declared as a 'special-interest contribution'. In order to have that service responsibility undertaken, the City of Hamm transfers the right to exclusive, long-term and comprehensive use of its sewage installations, for which the Lippeverband is to make a compensatory payment.

Although the service contracts in question are public service contracts within the meaning of Article 1(a) of Directive 92/50/EEC, they were concluded directly with the Lippeverband without a formal contract award procedure or a Europe-wide invitation to tender. The contracts are clearly to be classified as service contracts for pecuniary interest. They have been concluded by a public contracting authority for an unspecified period, have as their subject-matter the supply of waste-water disposal services within the meaning of Category 16 of Annex IA to that directive, and significantly exceed the threshold for application of the directive. Conclusion of the contracts should therefore have been subject to a Europe-wide invitation to tender.

Contrary to the assertions of the German Government, the transfer of the supply of services in question is neither a State measure of organisation nor a so-called 'in-house' award.

Firstly, it is doubtful whether a service responsibility can be transferred to a semi-public water authority such as the Lippeverband by a measure of State organisation, with approximately 25 % of private investors, without there being a Community contract award procedure. In the Commission's view, measures of State organisation, to which the provisions on the award of public contracts do not apply, are conceivable only between public institutions, whose activities serve exclusively the public interest. The fact that water authorities are entrusted by law with certain responsibilities in respect of sewage management does not alter in any way the fact that the Lippeverband is not part of the national administrative organisation for the purposes of Community law. Irrespective, however, of whether that responsibility can be transferred to the Lippeverband by a measure of State organisation, in the present case there is no such transfer of responsibility. The fact that the City of Hamm pays an annual remuneration for the supply of the services by the Lippeverband clearly places those contracts in the category of service contracts for pecuniary interest and excludes the possibility of there being a transfer of responsibility as part of public administration.

Secondly, as regards the exclusion of a so-called 'in-house' transaction from application of the rules governing the award of public contracts, in accordance with the case-law of the Court of Justice, those exceptions cannot apply where a private undertaking has a holding, even a minority one — in the institution given that responsibility. In such a case, the public awarding authority cannot have the same control over the undertaking in question as over its own services.

It follows from that analysis that this is a public service contract for pecuniary interest and no exempting provisions apply. Thus, by the direct award by the City of Hamm of the city sewage contracts, the Federal Republic of Germany has infringed the provisions of Directive 92/50.

([1]) Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1).

Reference for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 12 October 2010 — Criminal proceedings against Łukasz Marcin Bonda

(Case C-489/10)

(2011/C 13/29)

Language of the case: Polish

Referring court

Sąd Najwyższy

Party to the main proceedings

Łukasz Marcin Bonda

Question referred

What is the legal nature of the sanction provided for in Article 138 of Commission Regulation (EC) No 1973/2004 of 29 October 2004 laying down detailed rules for the application of Council Regulation (EC) No 1782/2003 as regards the support schemes provided for in Titles IV and IVa of that Regulation and the use of land set aside for the production of raw materials (OJ 2004 L 345, p. 1) which consists in refusing a farmer direct payments in the years immediately following the year in which he submitted an incorrect statement as to the size of the area forming the basis for direct payments?

Action brought on 12 October 2010 — European Parliament v Council of the European Union

(Case C-490/10)

(2011/C 13/30)

Language of the case: French

Parties

Applicant: European Parliament (represented by: M. Gómez-Leal, J. Rodrigues, L. Visaggio, acting as Agents)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU, Euratom) No 617/2010 of 24 June 2010 concerning the notification to the Commission of investment projects in energy infrastructure within the European Union and repealing Regulation (EC) No 736/96; ([1])

— Order the Council of the European Union to pay the costs.

Pleas in law and main arguments

By its action, the European Parliament seeks the annulment of Regulation (EU, Euratom) No 617/2010 of 24 June 2010 by which the Council established a common framework for the notification to the Commission of information on investment projects in energy infrastructure. The regulation was adopted by the Council on the dual legal basis of Articles 337 TFEU and 187 EA. According to the Parliament, the Council's choice of legal basis is erroneous because the measures covered by the contested regulation fall within the energy responsibilities of the Union which are specifically governed by Article 194 TFEU. Those measures should, therefore, have been adopted on the basis of Article 194(2) TFEU in accordance with the ordinary legislative procedure laid down in that provision, instead of on the basis of Article 337 TFEU, which does not provide for any involvement by the Parliament. In addition, the Parliament takes the view that it was not necessary to rely also on Article 187 EA in order to adopt the measures at issue.

([1]) OJ 2010 L 180, p. 7.

Reference for a preliminary ruling from the Unabhängiger Finanzsenat, Außenstelle Linz (Austria) lodged on 14 October 2010 — Immobilien Linz GmbH & Co KG v Finanzamt Freistadt Rohrbach Urfahr

(Case C-492/10)

(2011/C 13/31)

Language of the case: German

Referring court

Unabhängiger Finanzsenat, Außenstelle Linz

Parties to the main proceedings

Appellant: Immobilien Linz GmbH & Co KG

Respondent: Finanzamt Freistadt Rohrbach Urfahr

Question referred

Does the absorption of a company's losses by its sole member, a public body whose representative was instructed by the competent body to grant an annual member's contribution to cover losses up to the amount provisionally earmarked in the budget estimate or business plan adopted by the company prior to the beginning of the financial year, increase the assets of that company within the meaning of Article 4(2)(b) of Directive 69/335/EEC ([1]) (which is identical to Article 3(h) of Directive 2008/7/EC)?

([1]) Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital (OJ 1969 L 249, p. 25)

Reference for a preliminary ruling from High Court of Ireland made on 15 October 2010 — M. E. and others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

(Case C-493/10)

(2011/C 13/32)

Language of the case: English

Referring court

High Court of Ireland

Parties to the main proceedings

Applicants: M. E. and others

Defendants: Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

Questions referred

1. Is the transferring Member State under Council Regulation (EC) No. 343/2003 ([1]) obliged to assess the compliance of the receiving Member State with Article 18 of the Charter of Fundamental Rights and Freedoms of the EU, Council Directives 2003/9EC ([2]), 2004/83/EC ([3]) and 2005/85/EC ([4]) and Council Regulation (EC) No. 343/2003?

2. If the answer is yes, and if the receiving Member State is found not to be in compliance with one or more of those provisions, is the transferring Member Sate obliged to accept responsibility for examining the application under Article 3(2) of Council Regulation (EC) No. 343/2003?

([1]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national
OJ L 50, p. 1

([2]) Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers
OJ L 31, p. 18

([3]) Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
OJ L 304, p. 2

([4]) Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status
OJ L 326, p. 13

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 14 October 2010 — X NV v Staatssecretaris van Financiën

(Case C-498/10)

(2011/C 13/33)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: X NV

Defendant: Staatssecretaris van Financiën

Questions referred

1. Must Article 56 TFEU be interpreted as meaning that a restriction on the freedom to provide services exists if the recipient of a service, provided by a service provider established in another Member State, is obliged under the legislation of the Member State where the service recipient is established and where the service is provided, to withhold tax on the remuneration payable for that service, whereas that withholding obligation does not exist in relation to a service provider who is established in the same Member State as the service recipient?

2(a) If the answer to the previous question has the effect that legislation which provides for the imposition of tax by a service recipient hinders the freedom to provide services, can such a hindrance then be justified by the need to ensure that taxes are levied and collected from foreign companies whose stay in the Netherlands is short and which are difficult to control, with the result that the execution of the taxing powers allocated to the Netherlands becomes problematic?

2(b) In that case, is it relevant that the legislation was later amended for situations such as the one at issue here, in the sense that the tax was unilaterally waived because it proved incapable of being simply and efficiently applied?

3. Does the rule go beyond what is necessary given the opportunities for mutual assistance in the recovery of taxes presented in particular by Directive 76/308/EEC? ([1])

4. In answering the foregoing questions, is it relevant that the tax which is payable on the remuneration in the Member State where the service recipient is established can be set off against tax which is payable on that remuneration in that other Member State?

([1]) Council Directive of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties (OJ 1976 L 73, p. 18).

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Brugge (Belgium) lodged on 19 October 2010 — Vlaamse Oliemaatschappij v F.O.D. Financiën

(Case C-499/10)

(2011/C 13/34)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Brugge

Parties to the main proceedings

Applicant: Vlaamse Oliemaatschappij

Defendant: F.O.D. Financiën

Question referred

Does the former Article 21(3) of the Sixth Directive (77/388), [1] now incorporated in Article 205 of Council Directive 2006/112/EC [2] of 28 November 2006 on the common system of value added tax, in conjunction with Articles 202 and 157(1)(b) of the same Directive, authorise the Member States to provide that a warehouse-keeper other than a customs warehouse-keeper is jointly and severally liable, unconditionally, for the tax which is owing on a supply of goods made for valuable consideration by the owner of the goods who is liable for the tax on those goods, even where the warehouse-keeper acts in good faith or where no fault or negligence can be imputed to him (Article 51a(3) of the Wetboek van de belasting over toegevoegde waarde (WBTW).

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

[2] OJ 2006 L 347, p. 1

Reference for a preliminary ruling from the Højesteret (Denmark) lodged on 21 October 2010 — Partrederiet Sea Fighter v Skatteministeriet

(Case C-505/10)

(2011/C 13/35)

Language of the case: Danish

Referring court

Højesteret

Parties to the main proceedings

Applicant: Partrederiet Sea Fighter

Defendant: Skatteministeriet

Question referred

1. Is Article 8(1)(c) of Council Directive 92/81/EEC of 19 October 1992 [1] on the harmonisation of the structures of excise duties on mineral oils to be interpreted as meaning that mineral oils supplied for use in an excavator which is affixed to a vessel but which, because it has its own separate motor and fuel tank, operates independently of the vessel's propulsion motor, in circumstances such as those of the present case, are exempt from duty?

[1] OJ 1992 L 316, p. 12

Reference for a preliminary ruling from the Tribunale di Firenze (Italy), lodged on 25 October 2010 — Denise Bernardi, represented by Katia Mecacci v Fabio Bernardi

(Case C-507/10)

(2011/C 13/36)

Language of the case: Italian

Referring court

Tribunale di Firenze

Parties to the main proceedings

Claimant: Denise Bernardi, represented by Katia Mecacci

Defendant: Fabio Bernardi

Question referred

Must Articles 2, 3 and 8 of Framework Decision 2001/220/JHA of 15 March 2001 on the standing of victims in criminal proceedings [1] be interpreted as precluding national provisions, such as Article 392(1a) of the Italian Code of Criminal Procedure, in so far as the latter does not impose an obligation on the Public Prosecutor to request an early hearing and examination of a victim who is a minor by means of the Special Inquiry procedure prior to the main proceedings, and Article 394 of the Code of Civil Procedure, which does not make it possible for that minor victim himself or herself to appeal to the courts against a negative decision by the Public Prosecutor on his or her request to be heard in accordance with the appropriate Special Inquiry procedure?

[1] OJ 2001 L 82, p. 1.

Reference for a preliminary ruling from the Nejvyšší soud České republiky (Czech Republic) lodged on 2 November 2010 — Wolf Naturprodukte GmbH v Sewar spol. s r. o.

(Case C-514/10)

(2011/C 13/37)

Language of the case: Czech

Referring court

Nejvyšší soud České republiky

Parties to the main proceedings

Appellant: Wolf Naturprodukte GmbH

Respondent: Sewar spol. s r. o.

Question referred

Must Article 66(2) of Council Regulation (EC) No 44/2001 [1] of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ('the Brussels I Regulation') be interpreted as meaning that for that regulation to take effect it is necessary that at the time of delivery of a judgment the regulation was in force both in the State whose court delivered the judgment and in the State in which a party seeks to have that judgment recognised and enforced?

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

Action brought on 29 October 2010 — European Commission v Republic of Austria

(Case C-516/10)

(2011/C 13/38)

Language of the case: German

Parties

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

Defendant: Republic of Austria

Form of order sought

— Declare that, by maintaining in force Paragraph 5 in conjunction with Paragraph 2(3) and (4) and Paragraph 6(2)(g) of the VGVG, the Republic of Austria has infringed Articles 49 TFEU and 63 TFEU;

— Declare that, by maintaining in force Paragraph 6(2)(d) in conjunction with Paragraph 2(3) and (4) of the VGVG, the Republic of Austria has infringed Articles 49 TFEU and 63 TFEU;

— Order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission does not question the fact that Member States may restrict the purchase of plots of land on grounds of public interest. However, the provisions of the Vorarlberger Grundverkehrsgesetz (VGVG) cited in the forms of order sought constitute a disproportionate restriction on the free movement of capital and the right of establishment.

In particular, the so-called Interessentenregel ('interested parties rule'), according to which the VGVG landowners take precedence in purchases of agricultural land over non-landowners, is disproportionate. The continued agricultural use of the land can, according to the defendant, thus be guaranteed if the potential purchaser is willing to lease the land on a long-term basis to the previous tenant.

Similarly, it is not apparent why the interested parties rule should also apply where the previous owner includes his plot of land as an asset in kind in an undertaking or a foundation, although the continued agricultural use of the land is ensured.

In the view of the Commission, it is also disproportionate that the abovementioned interested parties rule is repeatedly applied where the purchase is not completed for reasons unconnected with the vendor.

Finally, the Commission disputes that the VGVG does not provide for any kind of regulation which permits, in the case of a lack of interest from landowners in the exploitation of a plot of agricultural land, that land to be sold without an obligation on the purchaser to use it for agricultural purposes.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) made on 2 November 2010 — Yeda Research and Development Company Ltd, Aventis Holdings Inc v Comptroller-General of Patents

(Case C-518/10)

(2011/C 13/39)

Language of the case: English

Referring court

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

Parties to the main proceedings

Applicants: Yeda Research and Development Company Ltd, Aventis Holdings Inc

Defendant: Comptroller-General of Patents

Question referred

If the criteria for deciding whether a product is 'protected by a basic patent in force' under Article 3(a) o the Regulation [1] include or consist of an assessment of whether the supply of the product would infringe the basic patent, does it make any difference to the analysis if infringement is by way of indirect or contributory infringement based on Article 26 of the Community Patent Convention, enacted as s60(2) Patents Act 1977 in the UK, and the corresponding provisions in the laws of other Member States of the Community?

[1] Regulation (EC) No 469/2009 of the European Parliament and of the Council of 6 May 2009 concerning the supplementary protection certificate for medicinal products OJ L 152, p. 1

Reference for a preliminary ruling from the Tribunale di Bari (Italy) lodged on 27 October 2010 — Giovanni Colapietro v Ispettorato Centrale Repressioni Frodi

(Case C-519/10)

(2011/C 13/40)

Language of the case: Italian

Referring court

Tribunale di Bari

Parties to the main proceedings

Applicant: Giovanni Colapietro

Defendant: Ispettorato Centrale Repressioni Frodi

Questions referred

1. What is the scope of Regulation (EEC) No 822/87, ([1]) that is to say, its spatial and temporal application, and the purpose thereof as regards penalties, with respect to the 1993/94 wine year, the period to which the case at issue relates?

2. Is it true that Article 39 of Regulation (EEC) No 822/87 was implemented, in respect of the 1993/94 wine year, by Regulation (EEC) No 343/94 ([2]) of 15 February 1994 and replaced with that regulation?

3. Is the application of the fine of LIT 390 250 000 (now EUR 201 547,30 — two hundred and one thousand five hundred and forty seven point 30 euros) for failure to deliver for compulsory distillation — in respect of the 1993/94 wine year — 7 084,87 hl of table wine, that volume having been calculated by applying the compulsory distillation quota to the lees produced (15 155 hl) (the yield being 126 hl/ha and the compulsory distillation quota being 51.5 %, in accordance with Regulation (EEC) No 610/94) ([3]) disproportionate in effect to the offences and in breach of the principle of fair punishment, which has been set out many times by the Court of Justice?

([1]) OJ 1987 L 84, p. 1.
([2]) OJ 1987 L 44, p. 9.
([3]) OJ 1994 L 77, p. 12.

Appeal brought on 19 November 2010 by Deltafina SpA against the judgment of the General Court (Fourth Chamber) delivered on 8 September 2010 in Case T-29/05 Deltafina v Commission

(Case C-537/10 P)

(2011/C 13/41)

Language of the case: Italian

Parties

Appellant: Deltafina SpA (represented by: J.-F. Bellis and F. Di Gianni, avvocati)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— vary the judgment under appeal in so far as it upholds the fine imposed on Deltafina, by annulling or, alternatively, reducing the fine imposed on Deltafina;

— annul the contested decision in so far as it imposes a fine on Deltafina or, alternatively, reduce the fine imposed on Deltafina;

— order the Commission to pay the costs of the proceedings, including those incurred before the General Court.

Pleas in law and main arguments

In support of its appeal, the appellant relies on two grounds:

1. the first ground of appeal, raised by way of principal claim, alleging that the General Court disregarded the principle of equal treatment, in failing to consider adequately the appellant's plea relating to the infringement of the principle of equal treatment in the computation of the fine imposed;

   in support of that ground of appeal, the appellant submits that the Commission applied the highest starting amount of the fine to Deltafina, on the basis that Deltafina was the main purchaser of Spanish processed tobacco. By contrast, the fine imposed on the other undertakings involved in the infringement (including Deltafina's sister company, Taes) was determined solely on the basis of their position on the Spanish raw tobacco market, that is to say, the market in which the infringement had occurred. The fine imposed on Deltafina breaches the principle of equal treatment, since Cetarsa and the undertakings Dimon/Agroexpansión and Standard/WWTE were also vertically integrated undertakings and held prominent positions on the Spanish processed tobacco market. This was not, however, taken into consideration when determining their respective fines. Thus, in determining the fine imposed on Deltafina, the Commission had regard to a factor which was not used in relation to the other undertakings;

2. the second ground of appeal, in the alternative, alleging that the General Court misapplied the concept of 'undertaking' in Article 81 EC, in rejecting, by means of contradictory and erroneous reasoning, the appellant's plea in law alleging the failure to apply to Deltafina the same reduction in fine granted to the sister company Taes following the joint application for leniency submitted by Taes and Deltafina under the auspices of their parent company, Universal.

   In support of that ground of appeal, the appellant submits that the General Court misapplied the concept of 'undertaking' in Article 81 EC, departing from the case-law of the Court of Justice and the General Court in the matter, in particular that resulting from Case C-97/08 P *Akzo Nobel and Others* v *Commission* [2009] ECR I-8237. The Commission Notice on the non-imposition or reduction of fines in cartel cases of 1996 (OJ 1996 C 207, p. 4) ought to have been applied to the undertaking Taes/Deltafina as a whole, and not to the two companies separately, since that notice applies to 'undertakings' and not to individual legal entities. Lastly, the appellant submits that the arguments put forward by the Commission with the aim of denying Deltafina the benefit of the reduction in fine granted to Taes are unfounded. The appellant submits that, in the light of such arguments, Deltafina and Taes constituted a single undertaking and, therefore, Deltafina ought to have received the same reduction in fine granted to Taes.

GENERAL COURT

Judgment of the General Court of 23 November 2010 — Codorniu Napa v OHIM — Bodegas Ontañón (ASTESA NAPA VALLEY)

(Case T-35/08) [1]

(Community trade mark — Opposition proceedings — Application for figurative Community trade mark ARTESA NAPA VALLEY — Earlier figurative Community trade mark ARTESO and earlier national word mark LA ARTESA — 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))

(2011/C 13/42)

Language of the case: Spanish

Parties

Applicant: Codorniu Napa, Inc. (Napa, California, United States) (represented by: X. Fàbrega Sabaté and M. Curell Aguilà, lawyers, and subsequently by M. Curell Aguilà and J. Güell Serra, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bodegas Ontañón, SA (Quel, La Rioja, Spain) (represented by: J. Grimau Muñoz and J. Villamor Muguerza, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 20 November 2007 (Case R 747/2006-4), concerning opposition proceedings between Bodegas Ontañón, SA and Codorniu Napa, Inc.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Codorniu Napa, Inc., to pay the costs.*

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[1] OJ C 92, 12.4.2008.

Judgment of the General Court of 12 November 2010 — Italy v Commission

(Case T-95/08) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Support scheme for production in the sector of products processed from fruit and vegetables — Exceptional support measures in the beef and veal sector — Tobacco premiums scheme)

(2011/C 13/43)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Aiello and G. Palmieri, lawyers)

Defendant: European Commission (represented by: F. Jimeno Fernández and D. Nardi, acting as Agents, assisted by F. Ruggeri Laderchi, lawyer)

Re:

Application for partial annulment of Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2008 L 18, p. 12), in so far as it excludes certain expenditure incurred by the Italian Republic in the sectors of products processed from fruit and vegetables, beef and veal and raw tobacco

Operative part of the judgment

The Court:

1. *dismisses the action;*

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

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[1] OJ C 92, 12.4.2008.

Judgment of the General Court of 12 November 2010 — Spain v Commission

(Case T-113/08) [1]

(EAGGF — Guarantee Section — Expenditure excluded from Community financing — Aid for the production of olive oil — Aid for arable crop areas)

(2011/C 13/44)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: M. Muñoz Pérez, acting as Agent)

Defendant: European Commission (represented by: F. Jimeno Fernández, acting as Agent)

Re:

Application for partial annulment of Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2008 L 18, p. 12), in so far as it relates to certain expenditure incurred by the Kingdom of Spain in the olive oil and arable crop sectors

Operative part of the judgment

The Court:

1. *dismisses the action;*

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

([1]) OJ C 107, 26.4.2008.

Judgment of the General Court of 24 November 2010 — Marcuccio v Commission

(Case T-9/09 P) ([1])

(Appeal — Staff cases — Officials — Dismissal of the action at first instance as manifestly inadmissible — Request for the return of personal property — Notification of the decision rejecting the complaint in a language other than that of the complaint — Action out of time — No response to a head of claim submitted at first instance)

(2011/C 13/45)

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, acting as Agents, assisted by 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-133/06 *Marcuccio* v *Commission*, not yet published in the ECR, seeking the annulment of that order

Operative part of the judgment

The Court:

1. *annuls the order of the Civil Service Tribunal of the European Union (First Chamber) of 4 November 2008 in Case F-133/06 Marcuccio v Commission, not yet published in the ECR, in so far as it did not rule on the application for a declaration that the decision contested at first instance did not exist;*

2. *dismisses the appeal as to the remainder;*

3. *dismisses the action inasmuch as it sought a declaration that the contested decision did not exist;*

4. *orders Mr Luigi Marcuccio to bear his own costs and to pay those incurred by the European Commission in the present case. The costs of the proceedings at first instance which culminated in the above order in Marcuccio v Commission are to be borne in accordance with point 2 of the operative part of that order.*

([1]) OJ C 55, 7.3.2009.

Judgment of the General Court of 24 November 2010 — Nike International v OHIM — Muñoz Molina (R10)

(Case T-137/09) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark R10 — Non-registered national word mark R10 — Assignment of the national mark — Procedural defect)

(2011/C 13/46)

Language of the case: Spanish

Parties

Applicant: Nike International Ltd (Beaverton, Oregon, United States) (represented by: M. de Justo Bailey, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Aurelio Muñoz Molina (Petrer, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 21 January 2009 (Case R 551/2008-1) relating to opposition proceedings between DL Sports & Marketing Ltda and Mr Aurelio Muñoz Molina.

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 21 January 2009 (Case R 551/2008-1);*

2. *Dismisses the remainder of the action;*

3. *Orders each party to bear its own costs.*

([1]) OJ C 129, 6.6.2009.

Judgment of the General Court of 10 November 2010 — OHIM v Simões Dos Santos

(Case T-260/09) ([1])

(Appeal — Cross-appeal — Civil service — Officials — Promotion — 2003 promotion procedure — Merit points reset at zero and their total recalculated — Compliance with a judgment of the General Court — Res judicata — Legal basis — Non-retroactivity — Legitimate expectation — Material damage — Loss of opportunity for promotion — Non-material damage)

(2011/C 13/47)

Language of the case: French

Parties

Appellant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, agent, and D. Waelbroeck, lawyer)

Other party to the proceedings: Simões Dos Santos (Alicante, Spain) (represented by: A. Creus Carreras, lawyer)

Re:

Appeal against the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 *Simões Dos Santos* v *OHIM*, not published in the ECR, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Paragraphs 2 to 25 of the operative part of the judgment of the Civil Service Tribunal of the European Union (First Chamber) of 5 May 2009 in Case F-27/08 Simões Dos Santos v OHIM are annulled.*

2. *The main appeal and the cross appeal are dismissed as to the remainder.*

3. *The case is referred back to the Civil Service Tribunal.*

4. *The costs are reserved.*

([1]) OJ C 220, 12.9.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Horizontal combination of the colours grey and red)

(Case T-404/09) ([1])

(Community trade mark — Application for Community trade mark consisting in a horizontal combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/48)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 379/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Deutsche Bahn AG to pay the costs.*

([1]) OJ C 297, 5.12.2009.

Judgment of the General Court of 12 November 2010 — Deutsche Bahn v OHIM (Vertical combination of the colours grey and red)

(Case T-405/09) ([1])

(Community trade mark — Application for Community trade mark consisting in a vertical combination of the colours grey and red — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 13/49)

Language of the case: German

Parties

Applicant: Deutsche Bahn AG (Berlin, Germany) (represented by: U. Hildebrandt, K. Schmidt-Hern and B. Weichhaus, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 23 July 2009 (Case R 372/2009-1) concerning an application for registration of a colour sign, consisting in the combination of the colours grey and red, as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Deutsche Bahn AG to pay the costs.*

([1]) OJ C 297, 5.12.2009.

Order of the General Court of 17 November 2010 — Victoria Sánchez v Parliament and Commission

(Case T-61/10) ([1])

(Action for failure to act — Failure to adopt measures — Application for directions to be issued — Request for protective measures — Action in part manifestly inadmissible and in part manifestly devoid of any basis in law)

(2011/C 13/50)

Language of the case: Spanish

Parties

Applicant: Fernando Marcelino Victoria Sánchez (Seville, Spain) (represented by: initially, N. Domínguez Varela and, subsequently, P. Suarez Plácido, lawyers)

Defendants: European Parliament (represented by: N. Lorenz, N Görlitz, P. López-Carceller, agents) and European Commission (represented by: L. Lozano Palacios and I. Martinez del Peral, agents)

Re:

Application for a declaration of failure to act on the part of the European Parliament and the European Commission in that those institutions unlawfully failed to respond to the applicant's letter of 6 October 2009, an application for directions to be issued and a request for protective measures.

Operative part of the order

1. *The action is dismissed.*

2. *Mr Fernando Marcelino Victoria Sánchez is ordered to pay the costs.*

3. *There is no need to adjudicate on the application for leave to intervene of Mr. Ignacio Ruipérez Aguirre and the ACT Petition Association.*

([1]) OJ C 100, 17.4.2010, p. 58.

Action brought on 1 September 2010 — Maftah v Commission

(Case T-101/09)

(2011/C 13/51)

Language of the case: English

Parties

Applicant: Elmabruk Maftah (London, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Regulation (EC) No 1330/2008 ([1]) insofar as it relates to the applicant;

— Order the defendant to immediately remove the applicant from the annex to the said regulation; and

— Order the defendant and/or the Council of the European Union to pay, 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 of the European Union.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 1330/2008, insofar as the name of the applicant has been placed on the list of persons and entities to which certain restrictive measures were imposed.

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

Firstly, the Commission has failed to independently review the basis of the applicant's inclusion in Annex I to Regulation (EC) No 881/2002 ([2]) at any point, or required any reasons or evidence for that inclusion.

In addition, the Commission has failed to provide to the applicant with any reasons at all and then failed to provide any adequate reasons justifying his inclusion in Annex I to Regulation (EC) No 881/2002 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.

Finally, the continued inclusion in Annex I to Regulation (EC) No 881/2002 is irrational given that: (i) there were and are no reasons available which would satisfy the relevant criteria for inclusion in the said annex; (ii) the United Kingdom's government's position is that the applicant no longer fulfils the relevant criteria; and (iii) the judgments by a specialized UK Court that the Libyan Islamic Fighting Group has not merged with the Al-Qaida network and/or every person associated with the Libyan Islamic Fighting Group has an Al-Qaida violent global jihadist ideology.

([1]) Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd 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 (OJ 2008 L 345, p. 60).

([2]) Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 1 September 2010 — Elosta v Commission

(Case T-102/09)

(2011/C 13/52)

Language of the case: English

Parties

Applicant: Abdelrazag Elosta (Pinner, United Kingdom) (represented by: E. Grieves, Barrister, and A. McMurdie, Solicitor)

Defendant: European Commission

Form of order sought

— Annul Regulation (EC) No 1330/2008 ([1]) insofar as it relates to the applicant;

— Order the defendant to immediately remove the applicant from the annex to the said regulation; and

— Order the defendant and/or the Council of the European Union to pay, 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 of the European Union.

Pleas in law and main arguments

By means of the present application, the applicant seeks, pursuant to Article 263 TFEU, the annulment of Commission Regulation (EC) No 1330/2008, insofar as the name of the applicant has been placed on the list of persons and entities to which certain restrictive measures were imposed.

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

Firstly, the Commission has failed to independently review the basis of the applicant's inclusion in Annex I to Regulation (EC) No 881/2002 [2] at any point, or required any reasons or evidence for that inclusion.

In addition, the Commission has failed to provide to the applicant with any reasons at all and then failed to provide any adequate reasons justifying his inclusion in Annex I to Regulation (EC) No 881/2002 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.

Finally, the continued inclusion in Annex I to Regulation (EC) No 881/2002 is irrational given that: (i) there were and are no reasons available which would satisfy the relevant criteria for inclusion in the said annex; (ii) the United Kingdom's government's position is that the applicant no longer fulfils the relevant criteria; and (iii) the judgments by a specialized UK Court that the Libyan Islamic Fighting Group has not merged with the Al-Qaida network and/or every person associated with the Libyan Islamic Fighting Group has an Al-Qaida violent global jihadist ideology.

[1] Commission Regulation (EC) No 1330/2008 of 22 December 2008 amending for the 103rd 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 (OJ 2008 L 345, p. 60).

[2] Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan (OJ 2002 L 139, p. 9).

Action brought on 11 October 2010 — France v Commission

(Case T-488/10)

(2011/C 13/53)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and N. Rouam, Agents)

Defendant: European Commission

Form of order sought

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant seeks annulment of European Commission Decision No C(2010) 5229 of 28 July 2010 concerning the cancellation of part of the contribution of the European Regional Development Fund (ERDF) under the single programming document for objective 1 for Community structural assistance in Martinique, France. That decision cancels in its entirety the contribution of the ERDF allocated to the major project entitled 'Village de vacances Club Méditerranée — Les Boucaniers' of EUR 12 460 000.

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

By its first plea, the applicant submits that the Commission has infringed Article 2(1) of Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts [1], by taking the view that the works contracts concluded for the renovation and extension of 'Club Méditerranée — Les Boucaniers' constituted works contracts directly subsidised by more than 50 % by the contracting authorities. Those contracts were subsidised by only 29,92 % of the cost of the project. The tax relief which the partners of the private companies received on account of their investment in the project cannot constitute a subsidy within the meaning of Article 2(1) of Directive 93/37/EEC.

By its second plea in law, which is divided into two parts, the applicant submits that the Commission infringed Article 2(2) of Directive 93/37/EEC by taking the view that the works contracts for the renovation and extension of 'Club Méditerranée — Les Boucaniers' concerned building work for facilities intended for sports, recreation and leisure within the meaning of that provision.

First, the applicant takes the view that the Commission should have taken account of the general industrial classification of economic activities within the European Communities (NACE) established by Regulation No 3037/90 [2] to which Article 2(2) of Directive 93/37/EEC refers. That classification distinguishes between hotels and restaurants on one hand and recreational, cultural and sporting activities on the other.

Second, the applicant takes the view that Article 2(2) of Directive 93/37/EEC concerns contracts which, by their very nature, fall within the traditional interests of the contracting authorities and that it therefore concerns facilities intended for sports, recreation and leisure open to all and not those reserved for private clients.

By its third plea, the applicant submits that the Commission has breached the duty to state reasons laid down in the second paragraph of Article 296 TFEU by failing to set out clearly and unequivocally the reasons why the renovation and extension works for 'Club Méditerranée — Les Boucaniers' concerned building work for facilities intended for sports, recreation and leisure within the meaning of Article 2(2) of Directive 93/37/EEC.

By its fourth plea in law, the applicant submits, in the alternative, that the Commission has breached the principle of proportionality by adopting a rate of correction of 100 % for the ERDF's subsidy, even though the works relating to the sports and leisure facilities are slightly below 10 % of the project.

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[1] OJ 1993 L 199, p. 54.

[2] Council Regulation (EEC) No 3037/90 of 9 October 1990 on the statistical classification of economic activities in the European Community

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Action brought on 15 October 2010 — SNCF v OHIM (infotrafic)

(Case T-491/10)

(2011/C 13/54)

Language in which the application was lodged: French

Parties

Applicant: Société nationale des chemins de fer français (SNCF) (Paris, France) (represented by: H. Reynaud, 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: Infotrafic SA (Ermont, France)

Form of order sought

— Alter paragraphs 16 to 23 of the decision of the Board of Appeal of OHIM of 6 August 2010 in Case R 1268/2009-2.

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: 'infotrafic' for goods and services in Classes 9, 16, 38, 39 and 42 — Community trade mark No 1 926 815

Proprietor of the Community trade mark: Infotrafic SA

Applicant for the declaration of invalidity: The applicant

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 52 and 7(1)(b) of Regulation No 207/2009, in so far as the examination of a complex Community trade mark in which one of the elements is devoid of distinctive character or has questionable distinctive character should consider each element separately: infringement of the obligation to state reasons.

Action brought on 28 October 2010 — Viktor Uspaskich v European Parliament

(Case T-507/10)

(2011/C 13/55)

Language of the case: Lithuanian

Parties

Applicant: Viktor Uspaskich (Kėdainiai, Lithuania) (represented by Vytautas Sviderskis, lawyer, and Stanislovas Tomas, legal consultant)

Defendant: European Parliament

Form of order sought

— Annul the Decision of the European Parliament of 7 September 2010 No P7_TA(2010)0296 on the request for waiver of the immunity of Viktor Uspaskich;

— Order the defendant to pay EUR 10 000 for the non-material damage suffered;

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

Pleas in law and main arguments

The applicant bases his application on four pleas in law.

First of all, the applicant submits that the defendant infringed his rights of defence and the principle of good administration in procedure 2009/2147 (IMM). The European Parliament refused to hear the applicant during the procedure for waiver of his immunity both in the Committee on Legal Affairs and during the plenary session. It failed to take account of the majority of the applicant's arguments and did not answer any of them.

Second, the European Parliament adopted the contested decision on an incorrect legal basis and infringed point (a) of the first paragraph of Article 9 of the Protocol on the Privileges and Immunities of the European Union because it relied on a clearly incorrect interpretation of the first and second paragraphs of Article 62 of the Lithuanian Constitution. The applicant refers to the judgment of the General Court of 19 March 2010 in Case T-42/06 *Gollnisch* v *Parliament*, in which the Court held that there had been an analogous infringement by the European Parliament.

Third, the defendant failed to observe the *fumus persecutionis* principle and committed a manifest error of assessment when considering it. The defendant entirely disregarded its previous decisions regarding *fumus persecutionis*. The European Parliament failed, moreover, to take into account the fact that at the time of the decision to bring a criminal prosecution a political leader was not responsible for infringements connected with administration, and that material from the preliminary investigation had been published.

Fourth, the defendant infringed the applicant's right to submit a request to defend his immunity in accordance with Rule 6(3) of the Rules of Procedure of the European Parliament. It refused to examine the applicant's request that it defend his immunity on the ground that the measure requiring him to pay a security of EUR 436 000 is disproportionate to the potential maximum fine for the criminal offence with which he is charged.

Action brought on 22 October 2010 — Evropaïki Dynamiki/Commission

(Case T-511/10)

(2011/C 13/56)

Language of the case: English

Parties

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

Defendant: European Commission

Form of order sought

— Annul the decision of 12 August 2010 of the Secretariat General of the European Commission (Ref. SG.E.3/FM/MIP/mbp/psi — Ares(2010) 508190 — 12/08/2010) rejecting the request for a review submitted by the applicant through its letter dated 31 December 2009, registered on 5 January 2010 (Ref. GESTDEM 2009/4890); and

— Order the defendant to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decision of 12 August 2010 (Ref. SG.E.3/FM/MIP/mbp/psi — Ares(2010) 508190 — 12/08/2010) rejecting the request for a review submitted by the applicant by its letter dated 31 December 2009, registered on 5 January 2010 (Ref. GESTDEM 2009/4890), in which the applicant, pursuant to Regulation (EC) No 1049/2001 [1], requested the review of the positions taken by the Publications Office of the European Union in its respective letter of 11 December 2009, following the applicant's initial request dated 9 October 2009, concerning access to all requests for quotation pertaining to all lots of the Publications Office's framework contracts No 6011, 6102, 6103, 6020, 6121, 6031 (apart from lot 4) and 10030.

In support of its claim the applicant argues that the defendant did not proceed to an individual assessment of the requested documents. Moreover, the applicant contends that the justification provided by the defendant with regard to the protection of the economic policy of the European Union, the protection of the commercial interests and the public security reasons should be rejected as wholly unfounded.

[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 1 November 2010 — Hamberger Industriewerke v OHIM (Atrium)

(Case T-513/10)

(2011/C 13/57)

Language in which the application was lodged: German

Parties

Applicant: Hamberger Industriewerke GmbH (Stephanskirchen, Germany) (represented by T. Schmidpeter, 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 26 August 2010 in Case R 291/2010-4;

— Order the defendant to pay the costs, including the costs incurred in the course of the appeal procedure.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'Atrium' for goods in Classes 19 and 27.

Decision of the Examiner: Application refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 207/2009 ([1]), as the Community trade mark concerned is distinctive and not merely descriptive.

([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 1 November 2010 — Fruit of the Loom v OHIM — Blueshore Management (FRUIT)

(Case T-514/10)

(2011/C 13/58)

Language in which the application was lodged: English

Parties

Applicant: Fruit of the Loom, Inc. (Bowling Green, USA) (represented by: S. Malynicz, Barrister, and V. G. Marsland, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Blueshore Management SA (Cernusco Sul Naviglio, Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 August 2010 in case R 1686/2008-4; and

— Order the defendant and the other party to the proceedings before the Board of Appeal to bear the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: The word mark 'FRUIT' for goods in classes 18, 24 and 25 — Community trade mark registration No 745216

Proprietor of the Community trade mark: The applicant

Party applying for revocation: The other party to the proceedings before the Board of Appeal

Decision of the Cancellation Division: Revoked the Community trade mark in part

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant claims that the contested decision infringes Article 15(1) of Council Regulation No 207/2009, as the Board of Appeal failed to take account of (i) the presentation and significance of the word 'FRUIT' within the marks shown in the proprietor's evidence of use, (ii) the evidence that the proprietor informally marketed its products under the name 'FRUIT', often using that mark verbally in dealings and transactions with its customers, and (iii) the evidence that the proprietor had used the mark 'FRUIT' as part of its marketing website.

Action brought on 3 November 2010 — France v Commission

(Case T-516/10)

(2011/C 13/59)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues and B. Cabouat, acting as Agents)

Defendant: European Commission

Form of order sought

— Annul Commission Decision C(2010) 5724 Final of 23 August 2010 on the application of financial corrections to assistance from the EAGGF, 'guidance' section, allocated to the Community initiative programme CCI 2000.FR. 060.PC.001 (France — LEADER+);

— Order the Commission to pay the costs.

Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2010) 5724 Final of 23 August 2010 on the application of financial corrections to assistance from the EAGGF, 'guidance' section, allocated to the Community initiative programme CCI 2000.FR.060.PC.001 (France — LEADER+). That decision provides that the assistance from the EAGGF, 'guidance' section, which was allocated pursuant to Commission Decision C(2001) 2094 of 7 August 2001, in respect of the expenditure effected under the Community initiative programme Leader+ in France is reduced by EUR 7 437 217,61.

Principally, the applicant submits that the contested decision should be annulled on the ground that the Commission wrongly interpreted and applied Article 9(l) and the third subparagraph of Article 32(1) of Regulation No 1260/1999. ([1]) The Commission took the view that the local action groups (LAGs) were the final beneficiaries of the Community initiative programme Leader+. However, the final beneficiaries of that programme were not the LAGs, but the project promoters. Consequently, contrary to what it maintains, the Commission was not led to pay in advance the expenditure effected by the final beneficiaries of the programme Leader+.

In the alternative, the applicant submits that the contested decision should be annulled because the Commission infringed the principle of the protection of legitimate expectations. By not adopting conclusions following an audit carried out in April 2005, then by not suspending the expenditure concerned, the Commission acted in a way which was liable to make the French authorities believe that the Commission was not calling into question their interpretation of the role of the LAGs and that, in any event, their management system concerning statements of expenditure did not involve any serious failings justifying a financial correction.

In the further alternative, the applicant submits that the contested decision should be annulled because the Commission should have chosen a lower amount of financial correction. First, the Commission erred as regards the amount of the basis of assessment to take into account in order to calculate the financial correction of 5 %. Secondly, the Commission infringed Article 39(3) of Regulation No 1260/1999 by not choosing a financial correction proportionate to the financial implications of the shortcomings found.

([1]) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1).

Action brought on 4 November 2010 — Pharmazeutische Fabrik Evers v OHIM — Ozone Laboratories Pharma (HYPOCHOL)

(Case T-517/10)

(2011/C 13/60)

Language in which the application was lodged: English

Parties

Applicant: Pharmazeutische Fabrik Evers GmbH & Co. KG (Pinneberg, Germany) (represented by: R. Kaase and R. Möller, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ozone Laboratories Pharma SA (București, Romania)

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 1st September 2010 in case R 1332/2009-4; and

— Order the defendant to pay the costs of the 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 'HYPOCHOL', for goods in class 5 — Community trade mark application No 5718069

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

Mark or sign cited: German trade mark registration No 1171145 of the figurative mark 'HITRECHOL', for goods in class 5

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 assumed that there was no likelihood of confusion between the trade marks due to a lacking similarity between the signs.

Action brought on 8 November 2010 — Seikoh Giken v OHIM — Seiko (SG SEIKOH GIKEN)

(Case T-519/10)

(2011/C 13/61)

Language in which the application was lodged: English

Parties

Applicant: Kabushiki Kaisha Seikoh Giken (Matsudo-shi, Japan) (represented by: G. Marín Raigal, P. López Ronda and G. Macias Bonilla, lawyers)

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

Other party to the proceedings before the Board of Appeal: Seiko Kabushiki Kaisha (Chuo-ku, Japan)

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 August 2010 in case R 1553/2009-1;

— Reject in its entirety the opposition to registration of the mark applied for in respect of the goods in class 25;

— Order the defendant to grant registration of the mark applied for;

— Order the defendant to pay the costs of the current proceedings; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the current proceedings, should it become an intervening party in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'SG SEIKOH GIKEN', for goods in classes 3, 7 and 9 — Community trade mark application No 908461

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

Mark or sign cited: Community trade mark registration No 2390953 of the word mark 'SEIKO', for goods and services in classes 1– 42

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision of the First Board of Appeal infringes the provisions of Council Regulation (EC) No 207/2009, hereinafter CTMR, by a misleading, incorrect interpretation and inappropriate enforcement of Article 8(1)(b) CTMR and the applicable case-law.

Action brought on 10 November 2010 — Comunidad Autónoma de Galicia v Commission

(Case T-520/10)

(2011/C 13/62)

Language of the case: Spanish

Parties

Applicant: Comunidad Autónoma de Galicia (Santiago de Compostela, Spain) (represented by: S. Martínez Lage and H. Brokelmann, lawyers)

Defendant: Commission

Form of order sought

— Annul Decision N 178/2010 of 29 September 2010 approving public-service compensation for Spanish electricity producers;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action is brought against the same decision as that challenged in Case T-484/10 *Gas Natural Fenosa SDG* v *Commission*.

The applicant puts forward three pleas in support of its action:

— Infringement of procedural rights ensured by Article 108(2) TFEU and Article 6 of Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty, ([1]) since the Commission failed to initiate the formal investigation procedure, which it is obliged to do whenever there are serious doubts as to the compatibility of the aid under consideration with the common market.

— Infringement of Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry ([2]).

— Infringement of Article 106(2) TFEU, inasmuch as the conditions of necessity and proportionality required by that provision if the aid in the present case, which was granted by the Spanish authorities to compensate for the additional costs resulting from the provision of a public service, is to be approved are not met.

— Infringement of Article 34 TFEU, since the aid in the present case is a measure having equivalent effect, which cannot be justified under Article 36 TFEU by the need to secure the electricity supply.

— The aid in the present case constitutes an undue cumulation of aid granted to the coal industry in the period 2008-2010, contrary to the provision made in Article 8(1) of Council Regulation (EC) No 1407/2002 of 23 July 2002 on State aid to the coal industry, ([3]) and seriously distorts competition in the electricity sector, disregarding Article 4(d) and (e) of Regulation No 1407/2002.

— Infringement of Articles 11 and 191 TFEU and of Article 3(3) TEU, since the contested decision fails, in the applicant's submission, to have to regard to the damaging effects which the decision will have so far as the environment is concerned.

Finally, the applicant alleges breach of the right to property safeguarded by Article 17 of the Charter of Fundamental Rights of the European Union.

([1]) OJ 1999 L 83, p. 1.
([2]) OJ 2002 L 205, p. 1
([3]) OJ 2002 L 205, p. 1.

Action brought on 8 November 2010 — Hell Energy v OHIM — Hansa Mineralbrunnen (HELL)

(Case T-522/10)

(2011/C 13/63)

Language in which the application was lodged: English

Parties

Applicant: Hell Energy Magyarország kft (Budapest, Hungary) (represented by: M. Treis, lawyer)

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

Other party to the proceedings before the Board of Appeal: Hansa Mineralbrunnen GmbH (Rellingen, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 5 August 2010 in case R 1517/2009-1;

— Allow the registration of the Community trade mark application No 5937107; and

— Order the other party to the proceedings before the Board of Appeal to bear the costs of the current proceedings as well as those incurred by the applicant before the Board of Appeal and the Opposition Division.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'HELL', for goods in class 32 — Community trade mark application No 5937107

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

Mark or sign cited: Community trade mark registration No 5135331 of the word mark 'Hella', for goods in class 32

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: The applicant considers that the contested decision infringes Article 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal and the Opposition Division erred in their decisions in finding a likelihood of confusion.

Action brought on 8 November 2010 — Interkobo v OHIM — XXXLutz Marken (mybaby)

(Case T-523/10)

(2011/C 13/64)

Language in which the application was lodged: Polish

Parties

Applicant: Interkobo Sp. z o.o. (Łódź, Poland) (represented by: R. Skubisz, 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: XXXLutz Marken GmbH (Wels, Austria)

Form of order sought

— declare invalid in its entirety the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 September 2010 in Case R 88/2009-4;

— order the defendant and XXXLutz Marken GmbH to pay the costs of the proceedings, including the costs incurred by the applicant in the proceedings before the Board of Appeal and the Opposition Division of the Office for Harmonisation in the Internal Market.

Pleas in law and main arguments

Applicant for a Community trade mark: XXXLutz Marken GmbH.

Community trade mark concerned: figurative mark 'my baby' for goods in Class 28 — application no 4894416.

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

Mark or sign cited in opposition: national word mark 'MYBABY', national figurative mark 'mybaby' and international word mark 'MYBABY' for goods in Class 28.

Decision of the Opposition Division: upholding of the opposition and rejection of the application for a trade mark for goods in Class 28.

Decision of the Board of Appeal: annulment of the decision of the Opposition Division and rejection of the opposition.

Pleas in law: breach of Rule 20(1), in conjunction with Rule 19(2)(a)(i) and (ii) and Rule 19(3), of Regulation No 2868/95 [1] and infringement of the right to seek protection of legitimate expectations.

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

Action brought on 5 November 2010 — Azienda Agricola Colsaliz di Faganello Antonio v OHIM — Weinkellerei Lenz Moser (SERVO SUO)

(Case T-525/10)

(2011/C 13/65)

Language in which the application was lodged: Italian

Parties

Applicant: Azienda Agricola Colsaliz di Faganello Antonio (Refrontolo, Italy) (represented by: G. Massa and P. Massa, 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: Weinkellerei Lenz Moser AG (Linz, Austria)

Form of order sought

— Annul the contested decision.

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Azienda Agricola Colsaliz di Faganello Antonio.

Community trade mark concerned: Word mark 'SERVO SUO' (application No 5 798 244) for goods in Class 33.

Proprietor of the mark or sign cited in the opposition proceedings: Weinkellerei Lenz Moser Aktiengesellschaft.

Mark or sign cited in opposition: Community word mark 'SERVUS' (No 579 193), international figurative marks containing the word element 'SERVUS' (Nos 580 447 A and 844 793) and the international word mark 'SERVUS' (No 727 131), for goods in Class 33.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

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

Action brought on 9 November 2010 — Inuit Tapiriit Kanatami and Others v Commission

(Case T-526/10)

(2011/C 13/66)

Language of the case: English

Parties

Applicants: Inuit Tapiriit Kanatami (Ottawa, Canada), Nativak Hunters and Trappers Association (Qikiqtarjuaq, Canada), Pangnirtung Hunters' and Trappers' Association (Pangnirtung, Canada), Jaypootie Moesesie (Qikiqtarjuaq, Canada), Allen Kooneeliusie (Qikiqtarjuaq, Canada), Toomasie Newkingnak (Qikiqtarjuaq, Canada), David Kuptana (Ulukhaktok, Canada), Karliin Aariak (Iqaluit, Canada), Canadian Seal Marketing Group (Quebec QC, Canada), Ta Ma Su Seal Products Inc. (Cap-aux-Meules, Canada), Fur Institute of Canada (Ottawa, Canada), NuTan Furs Inc. (Catalina, Canada), GC Rieber Skinn AS (Bergen, Norway), Inuit Circumpolar Conference Greeneland (ICC) (Nuuk, Greenland), Johannes Egede (Nuuk, Greenland), Kalaallit Nunaanni Aalisartut Piniartullu Kattuffiat (KNAPK) (Nuuk, Greenland), William E. Scott & Son (Edinburgh, United Kingdom), Association des chasseurs de phoques des Îles-de-la-Madeleine (Cap-aux-Meules, Canada), Hatem Yavuz Deri Sanayi iç Ve Diş Ticaret Limited Şirketi (Istanbul, Turkey), Northeast Coast Sealers' Co-Operative Society Limited (Fleur de Lys, Canada) (represented by: J. Bouckaert and H. Viaene, lawyers)

Defendant: European Commission

Form of order sought

— declare the action admissible;

— annul Regulation No 737/2010 pursuant to Article 263 TFUE;

— declare Regulation No 1007/2009 inapplicable pursuant to Article 277 TFUE;

— order the European Parliament and the European Council to pay the applicants' costs;

— order the European Parliament and the European Council to pay their own costs.

Pleas in law and main arguments

By means of this application the applicants seek the annulment of Commission Regulation (EU) No 737/2010 of 10 August 2010 ([1]) laying down detailed rules for the implementation of Regulation (EC) No 1007/2009 of the European Parliament and of the Council on trade in seal products ([2]). The annulment of Regulation No 1007/2009, providing for restrictions on the placing on the market of the European Union of the seal products, is sought by the applicants in the framework of Case T-18/10.

The applicants put forward two pleas in law in support of their claims.

First, they argue that the implementing regulation has for legal basis the basic regulation against which they raise an exception of illegality based on Article 277 TFUE. In this regard, the applicants repeat the arguments put forward in support of their claims in Case T-18/10 ([3]).

Second, in subsidiary order, the applicants submit that the Commission erred in law when adopting the implementing regulation since it misused the powers conferred to it by the basic regulation. In the applicants' view, the Commission has used its powers for a purpose other than that for which they were conferred on it and they contend that the true aim pursued by the Commission, when adopting the implementing regulation, was to block any placing on the Union market of seal products.

([1]) OJ 2010 L 216, p. 1
([2]) OJ 2009 L 286, p. 36
([3]) OJ 2010 C 100, p. 41

Order of the General Court of 11 November 2010 — Katjes Fassin v OHMI (Yoghurt-Gums)

(Case T-25/08) ([1])

(2011/C 13/67)

Language of the case: German

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

([1]) OJ C 64, 8.3.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 28 October 2010 — Vicente Carajosa and Others v Commission

(Case F-77/08) [1]

(Civil service — Open competitions EPSO/AD/116/08 and EPSO/AD/117/08 in the field of fraud prevention — Exclusion of candidates in consequence of their results in the admission tests — Decision of the Appointing Authority — Failure to lodge a complaint — Inadmissibility of the action)

(2011/C 13/68)

Language of the case: French

Parties

Applicants: Isabel Vicente Carajosa and Others (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission (represented by: J. Currall and B. Eggaers, acting as Agents)

Intervener in support of the applicant: Kingdom of Spain (represented by: F. Díez Moreno, acting as Agent)

Re:

Annulment of EPSO's individual decisions not to admit the applicants to the tests in competitions EPSO/AD/116/08 and EPSO/AD/117/08.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the applicants to bear their own costs and to pay those incurred by the European Commission;*

3. *Orders the Kingdom of Spain, intervener, to bear its own costs.*

[1] OJ C 285 of 8.11.2008, p. 57.

Judgment of the Civil Service Tribunal (First Chamber) of 28 October 2010 — Cerafogli v European Central Bank

(Case F-84/08) [1]

(Staff case — ECB Staff — Action for damages seeking compensation for harm resulting directly from alleged illegality of conditions of employment and staff rules — Civil Service Tribunal's lack of jurisdiction — Inadmissible — Release from service for staff representation — No adjustment of workload — Wrongful act)

(2011/C 13/69)

Language of the case: French

Parties

Applicant: Maria Concetta Cerafogli (Frankfurt-am-Main, Germany) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank (represented by: F. Malfrère and N. Urban, agents, and by B. Wägenbaur, lawyer)

Re:

Application for an order requiring the ECB to pay compensation in respect of the damage allegedly suffered by the applicant on account of discrimination connected with her trade union activities.

Operative part of the judgment

The Tribunal:

1. *Orders the European Central Bank to pay Ms Cerafogli the sum of EUR 5 000;*

2. *Dismisses the remainder of the application:*

3. *Orders the European Central Bank to bear its own costs and to pay one third of Ms Cerafogli's costs;*

4. *Orders Ms Cerafogli to bear two thirds of her costs.*

[1] OJ C 327 of 20.12.2008, p. 43.

Judgment of the Civil Service Tribunal (First Chamber) of 28 October 2010 — Cerafogli v European Central Bank

(Case F-96/08) ([1])

(Civil service — ECB Staff — Pay — Additional increase in salary — Ad personam promotion — Consultation with staff committee to determine the criteria for granting additional increases in salary)

(2011/C 13/70)

Language of the case: French

Parties

Applicant: Maria Concetta Cerafogli (Frankfurt am Main, Germany) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Central Bank (represented by: F. Alfrère and N. Urban, Agents and B. Wägenbaur, lawyer)

Re:

Annulment of the ECB Decision not to award the applicant the benefit of an *ad personam* promotion and an order that the defendant pay compensation for the applicant's pain and suffering.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision by which the European Central Back refused to grant Mrs Cerafogli an additional increase in salary for 2008;*

2. *Orders the European Central Bank to pay Mrs Cerafogli the sum of EUR 3 000;*

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

4. *Order the European Central Bank to pay all of the costs.*

([1]) OJ C 44, 21.02.2009, p. 75.

Judgment of the Civil Service Tribunal (First Chamber) of 28 October 2010 — Vicente Carbajosa and Others v Commission

(Case F-9/09) ([1])

(Staff case — Open competitions EPSO/AD/116/08 and EPSO/AD/117/08 in the field of fraud prevention — Act adversely affecting the applicants — Exclusion of candidates following results obtained in admission tests — EPSO not competent)

(2011/C 13/71)

Language of the case: French

Parties

Applicant: Vicente Carbajosa and Others (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

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

Re:

Application for annulment of the decision adopting and publishing the competition notices EPSO/AD/116/08 and EPSO/AD/117/08 and the decisions relating to the correction of the pre-selection tests and the written tests and the awarding of marks for the oral tests.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of the European Personnel Selection Office (EPSO) not to admit Ms Vicente Carbajosa in respect of the competition EPSO/AD/117/08 and Ms Lehtinen and Ms Menchén in respect of the competition EPSO/AD/116/08 onto the list of candidates invited to submit a full application;*

2. *Dismisses the remainder of the action as being inadmissible;*

3. *Orders the European Commission to pay the costs.*

([1]) OJ C 82 of 04.04.2009, p. 37.

Judgment of the Civil Service Tribunal (First Chamber) of 12 October 2010 — Wendler v Commission

(Case F-49/09) ([1])

(Staff case — Officials — Retirement pension — Payment of pension — Obligation to open a bank account in country of residence — Freedom to provide services — Plea involving a matter of public policy — Principle of equal treatment)

(2011/C 13/72)

Language of the case: German

Parties

Applicant: Eberhard Wendler (Laveno Mombello, Italy) (represented by: M. Müller-Trawinski, lawyer)

Defendant: European Commission (represented by: D. Martin and B. Eggers, agents)

Intervener in support of the defendant: Council of the European Union (represented by: M. Bauer and K. Zieleśkiewicz, agents)

Re:

Annulment of the Commission's request that the applicant designate a bank account in his country of residence for his pension payments.

Operative part of the judgment

The Tribunal:

1. *Dismisses Mr Wendler's action;*

2. *Orders Mr Wendler to bear his own costs and to pay the costs of the European Commission;*

3. *Orders the Council of the European Union to bear its own costs.*

([1]) OJ C 167 of 18.07.2009, p. 27.

Order of the Civil Service Tribunal (First Chamber) of 26 October 2010 — AB v Commission

(Case F-3/10) ([1])

(Staff cases — Contract staff — Non-renewal of a fixed-term contract — Complaint out of time — Manifest inadmissibility)

(2011/C 13/73)

Language of the case: English

Parties

Applicant: AB (Brussels, Belgium) (represented by: S.A. Pappas, lawyer)

Defendant: European Commission (represented by: J. Currall and D. Martin, Agents)

Re:

Application for annulment of the decision not to renew the applicant's contract as a member of the contract staff.

Operative part of the order

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

2. *The applicant shall pay the costs.*

([1]) OJ C 100, 17.4.2010, p. 69.

Action brought on 22 September 2010 — Nolin v Commission

(Case F-82/10)

(2011/C 13/74)

Language of the case: French

Parties

Applicant: Michel Nolin (Brussels, Belgium) (represented by: M. Velardo, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for the annulment of the applicant's salary adjustment slip for the period from July to December 2009 and the salary slip of 1 January 2010 issued within the framework of the annual adjustment of the remuneration and pensions of officials and other servants pursuant to Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the applicant's salary slip RG/2009 and his salary slip of 01/2010;

— order the European Commission to pay the costs.

Action brought on 23 September 2010 — Giannakouris v Commission

(Case F-83/10)

(2011/C 13/75)

Language of the case: Greek

Parties

Applicant: Konstantinos Giannakouris (Roodt-sur-Syre, Luxembourg) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Commission whereby the education allowance granted to the applicant was reduced on the basis that his daughter receives financial assistance from a Member State by way of a grant and a loan.

Form of order sought

— First, annul the decision to reduce the 'education allowance' paid to the applicant, as evidenced from the pay slip for February 2010, and annul that pay slip in so far as it reduces the 'education allowance' in part; second, annul the decision of the Commission of 26 February 2010, relating to the reduction of the 'education allowance' paid to the applicant and the deduction of EUR 770,85 from that allowance, the deduction appearing on the pay slip for March 2010; third, annul the pay slip for March 2010 reducing the 'education allowance' paid to the applicant and containing a retroactive deduction of EUR 770,85; fourth, annul the pay slips from April to August 2010, in so far as they contain a reduction in part of the 'education allowance'; and fifth, annul the decision of the Commission of 9 July 2010 expressly rejecting the complaint;

— reimburse the applicant, with interest, the sums withheld from him;

— order the European Commission to pay the costs.

Action brought on 23 September 2010 — Chatzidoukakis v Commission

(Case F-84/10)

(2011/C 13/76)

Language of the case: Greek

Parties

Applicant: Efstratios Chatzidoukakis (Schrassig, Luxembourg) (represented by: V. Christianos, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision to reduce the education allowance granted to the applicant on the ground that his son receives financial support from a Member State in the form of a bursary and a loan.

Form of order sought

— Annul, first, the decision to reduce the 'education allowance' paid to the applicant as specified in the pay slip of February 2010, and the pay slip in question to the extent that it partially reduces the 'education allowance': second, the Commission decision of 26 February 2010 relating to the reduction of the 'education allowance' paid to the applicant and to the deduction of a sum of EUR 375 from that allowance, a deduction which appears on the pay slip of March 2010; third, the pay slip of March 2010, reducing the 'education allowance' paid to the applicant and containing a backdated reduction of EUR 375; fourth, the pay slips for the months of April to August 2010, to the extent that they contain a partial reduction of the 'education allowance'; fifth, the Commission decision of 9 July 2010, expressly rejecting the complaint;

— Refund, with interest, to the applicant the amounts deducted from his entitlements;

— Order the European Commission to pay the costs.

Action brought on 23 September 2010 — AI v Court of Justice

(Case F-85/10)

(2011/C 13/77)

Language of the case: French

Parties

Applicant: AI (represented by: M. Erniquin, lawyer)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

First, annulment of the deliberations of the Selection Board concerning the results of the French test in internal competition on the basis of tests No CJ 12/09 and, to the extent necessary, annulment of the contracts and appointments of the persons who passed that competition and, second, annulment of the decision not to renew the applicant's temporary staff contract, and application for compensation for damage.

Form of order sought

— Annulment of the deliberations of the Selection Board relating to the French test in internal competition on the basis of tests No CJ 12/09;

— to the extent necessary, annulment of the appointments of the 8 candidates who passed that test;

— communication of the assessment criteria on the basis of which the selection was made;

— principally, reclassification of the applicant's fixed-term employment contract as a contract for an indefinite period, and therefore annulment of the decision not to renew her temporary staff contract of January 2009, and, consequently, her reinstatement as a member of the temporary staff; in the alternative, annulment of the decision not to renew her temporary staff contract of January 2009, and, therefore, her reinstatement as a member of the temporary staff;

— consequently, recognition of the entitlement to compensation corresponding to the difference between the remuneration which she would have received had the contract in question continued on 1 January 2010 and the emoluments which she in fact received as from that date until the date of her actual reinstatement;

— payment of compensation for the non-material damage suffered in particular as a result of the wrongful failure to renew her contract of employment, assessed at EUR 100 000 should the applicant's reinstatement be ordered, or alternatively compensation of EUR 500 000 should it prove impossible to reinstate the applicant;

— an order that the Court of Justice should pay the costs.

Action brought on 24 September 2010 — Adriaens and Others v Commission

(Case F-87/10)

(2011/C 13/78)

Language of the case: French

Parties

Applicants: Stéphane Adriaens (Evere, Belgium) and Others (represented by: Casado García-Hirschfeld, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the defendant's decision, contained in the applicants' pay slips, to limit their salary adjustment, with effect from July 2009, to an increase of 1,85 % in the context of the annual adjustment of remuneration and pensions of officials and other servants on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the contested decision in so far as it sets the rate of salary adjustment at 1,85 %, applying Regulation No 1296/2009, adjusting with effect from 1 July 2009 the remuneration and pensions of officials and other servants and the correction coefficients applied thereto;

— Grant to the applicants backdated interest, calculated on the basis of the rate fixed by the European Central Bank, payable on the total sums corresponding to the difference between the salary specified in the pay slips dating from January 2010 and the adjusted pay slips for the period from July to December 2009 and the salary to which they would have been entitled, until the date of the late adjustment of those salaries:

— Order the European Commission to pay the costs.

Action brought on 30 September 2010 — AK v Commission

(Case F-91/10)

(2011/C 13/79)

Language of the case: French

Parties

Applicant: AK (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision rejecting the applicant's application for compensation for the loss suffered by reason of the failure to establish career development reports and to open an administrative inquiry to establish the facts of harassment and application for compensation for the damage suffered.

Form of order sought

— Annul the decision rejecting the application filed by the applicant on 24 November 2009 seeking compensation for the loss suffered by reason of the failure to establish his career development reports for 2001-2002, 2004, 2005 and 2008 and seeking the opening of an administrative inquiry to establish the facts of harassment;

— Order the Commission to pay to the applicant, firstly, the sum of EUR 53 000 for the loss of the chance of promotion to grade A5 in promotion year 2003, in addition to the regularisation of his pension rights by payment of the corresponding contributions; secondly, the sum of EUR 400 per month (corresponding to 70 % of the difference between the invalidity allowance which she receives and that which she would have received had she been promoted in 2003); and, thirdly, the sum of EUR 35 000 for the non-material damage suffered as a result of the maintenance of her irregular administrative situation despite, inter alia, the judgments of 20 April 2005 and 6 October 2009 of the General Court and of 13 December 2007 of the European Union Civil Service Tribunal;

— Order the European Commission to pay the costs.

Action brought on 1 October 2010 — Dricot-Daniele and Others v Commission

(Case F-92/10)

(2011/C 13/80)

Language of the case: French

Parties

Applicants: Luigia Dricot-Daniele (Overijse, Belgium) and Others (represented by: C. Mourato, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the applicants' correcting pay slips for the period from July to December 2009 and the pay slips issued after 1 January 2010 in the context of the annual adjustment of remuneration and pensions of officials and other servants on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009.

Form of order sought

— Annul the applicants' RG 2009 pay slips, their pay slips of January 2010 and their subsequent pay slips, since those pay slips apply an adjustment rate of 1,85 %, while preserving the effect of those pay slips until the adoption of fresh pay slips;

— Order the Commission to pay the costs.

Action brought on 4 October 2010 — Carpenito v Council

(Case F-94/10)

(2011/C 13/81)

Language of the case: French

Parties

Applicant: Renzo Carpenito (Overijse, Belgium) (represented by: L. Levi and S. Rodrigues, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Application for the retention of the effects of the contested salary statements until the adoption of a regulation replacing, with retroactive effect, Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009, and for compensation in respect of the applicant's financial loss and his pain and suffering

Form of order sought

— Retain the effects of the contested salary statements until the adoption of a regulation replacing, with retroactive effect, Regulation No 1296/2009;

— order the Council to compensate the applicant for his financial loss in an amount equivalent to the loss of remuneration resulting from the manifestly unlawful application of Regulation No 1296/2009, to which must be added reimbursement of the special monthly charge deducted since January 2010 pursuant to Article 66a of the Statute, the rate of which was wrongly fixed in the light of that regulation. That amount is estimated, subject to the Civil Service Tribunal's interpretation, at EUR 30 000;

— order the Council to pay the applicant the symbolic amount of EUR 1 as compensation for his pain and suffering;

— order the Council to pay the costs.

Action brought on 4 October 2010 — Kerstens v Commission

(Case F-97/10)

(2011/C 13/82)

Language of the case: French

Parties

Applicant: Petrus Kerstens (Overijse, Belgium) (represented by: L. Levi and S. Rodrigues, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Application to maintain the effects of contested salary slips pending the adoption of a regulation replacing, with retroactive effect, Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009 and for payment of damages for the material and non-material damage suffered by the applicant.

Form of order sought

— the maintenance of the effects of contested salary slips pending the adoption of a regulation replacing, with retroactive effect, Regulation No 1296/2009;

— order the Commission to compensate the applicant for the financial loss he suffered by the payment of a sum to the amount equivalent to the loss of earnings resulting from the application of the manifestly illegal Regulation No 1296/2009, plus the repayment of the part of the special levy applied monthly since January 2010 in accordance with Article 66 of the Staff Regulations, the rate of which was erroneously fixed taking account of that regulation: that amount is estimated, without prejudice to the interpretation of the Tribunal, at between EUR 40 000 and EUR 50 000, excluding default interest which was also applied for by the applicant;

— order the Commission to pay symbolic damages of one euro to the applicant for the non-material damage he suffered;

— order the European Commission to pay the costs.

Action brought on 7 October 2010 — Cervelli v Commission

(Case F-98/10)

(2011/C 13/83)

Language of the case: French

Parties

Applicant: Francesca Cervelli (Brussels, Belgium) (represented by: J. R. García-Gallardo Gil-Fournier and M. Arias Díaz, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the Commission's decision refusing to grant the applicant the expatriation allowance.

Form of order sought

The applicant claims that the Tribunal should:

— declare the Commission's rejection decision of 30 June 2010 null and void;

— order the European Commission to pay the costs.

Action brought on 5 October 2010 — Ashbrook and Others v Commission

(Case F-99/10)

(2011/C 13/84)

Language of the case: French

Parties

Applicants: Michael Ashbrook (Luxembourg, Luxembourg) and Others (represented by: B. Cortese, C. Cortese and F. Spitaleri, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the defendant's decisions, reproduced in the applicants' pay slips, to limit the adjustment of their salaries, with effect from July 2009, to an increase of 1,85 % in the context of the annual adjustment of the remuneration and pensions of officials and other servants on the basis of Council Regulation (EU, Euratom) No 1296/2009 of 23 December 2009, and claim for compensation.

Form of order sought

— Annul the Commission's decisions, contained in the applicants' pay slips for January 2010 and the months thereafter, and in their slips concerning arrears of salary for 2009, in so far as those decisions apply a rate of adjustment of 1,85 % instead of a rate of 3,7 %;

— Order the Commission to pay the difference between the amount of remuneration paid in application of Regulation No 1296/09 until the date of delivery of judgment in this case and the amount which should have been paid to them if the adjustment had been calculated correctly, together with interest at the rate set by the European Central Bank for main refinancing operations applicable in the periods concerned, plus 3,5 percentage points, for the period starting with the date on which sums principally claimed were due;

— Order the European Commission to pay the costs.

Action brought on 21 October 2010 — De Pretis Cagnodo and Trampuz v European Commission

(Case F-104/10)

(2011/C 13/85)

Language of the case: Italian

Parties

Applicants: Mario Alberto de Pretis Cagnodo and Serena Trampuz (Trieste, Italy) (represented by: C. Falagiani, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision refusing to reimburse 100 % of certain medical expenses in connection with the hospitalisation of the wife of a retired official.

Form of order sought

— Suspend, or in any event prohibit provisionally, implementation of the compulsory recovery procedure for the sums at issue, in the light of the prima facie case disclosed by the present application, the serious material loss which the applicants would otherwise suffer and the lack of clarity in relation to the computation of the contested sums and, consequently, prohibit temporarily the automatic deduction of such sums from the pension of Mr de Pretis Cagnodo;

— declare that that the applicants are not required to reimburse any payments made by the claims settlement office, Ispra and, consequently, order the Commission to withdraw

the claim for reimbursement of the sum of EUR 41 833 — or any other such sum claimed — and to desist from any automatic deduction of that amount from the pension of Mr de Pretis Cagnodo, it having been confirmed and declared that Mrs Trampuz can in no way be criticised or censured regarding the calculation and payment of the costs of the hospital stay as claimed by the hospital where she was admitted, the illness which caused her to be hospitalised and the surgery which she underwent have been categorised as 'serious', and the length of time for which she was admitted regarded as inevitable and clinically correct;

— order the defendant to pay the costs.

Action brought on 26 October 2010 — Schätzel v Commission

(Case F-109/10)

(2011/C 13/86)

Language of the case: German

Parties

Applicant: Michael Wolfgang Schätzel (Ransbach-Baumbach, Germany) (represented by: R. Oehmen, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the Commission refusing to pay the applicant a severance grant

Form of order sought

— Annul the decision of the European Commission of 8 April 2010 to refuse [the applicant a severance grant] and the decision rejecting the appeal of 30 July 2010, Appeal R/351/10 and order the Commission to pay him a severance grant in respect of his service from 1 March 2009 to 28 February 2010, equal to the actuarial value of his pension rights acquired during service in the Commission;

— Order the Commission to pay the costs.

Action brought on 29 October 2010 — Couyoufa v Commission

(Case F-110/10)

(2011/C 13/87)

Language of the case: French

Parties

Applicant: Denise Couyoufa (Athens, Greece) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the defendant's decision rejecting the applicant's application for exemption from the mandatory staff rotation.

Form of order sought

— Declare that the decision of 31 July 2008 is vitiated by illegality;

— Annul the decision of 26 February 2010 rejecting Ms Couyoufa's application;

— Annul the decision rejecting her appeal against that decision;

— Order the European Commission to pay the costs.

Action brought on 2 November 2010 — Trentea v FRA

(Case F-112/10)

(2011/C 13/88)

Language of the case: English

Parties

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

Defendant: European Union Agency for Fundamental Rights (FRA)

The subject matter and description of the proceedings

First, annulment of the decision of the Authority Responsible for Concluding Contracts of Employment rejecting the Appellant's candidature for a post of administrative assistant in the procurement and finance fields and of the decision appointing another candidate. Second, compensation for material and non-material loss.

Form of order sought

The applicant claims that the Court should:

— annul the Decision of the Authority Responsible for Concluding Contracts of Employment of 5 June 2010 rejecting the Appellant's candidature for post (ref. TAADMIN-AST4-2009) and the Decision appointing another candidate;

— If necessary, annul the Decision of 22 July 2010 rejecting the Appellant's complaint and of the Decision of 27 September 2010 rejecting the Appellant's Request for review and Completion to the Complaint;

— Order that the Defendant compensates the Appellant's material prejudice corresponding to the difference between her current salary and the AST4 salary, until retirement age, including all allocations and indemnities and compensation of pension rights;

— Order that the Defendant compensates the Appellant's moral prejudice evaluated ex aequo et bono at 10 000 Euro;

— order that the Defendant pays all costs.

Order of the Civil Service Tribunal of 18 November 2010 — Vereecken v Commission

(Case F-17/06) ([1])

(2011/C 13/89)

Language of the case: French

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

([1]) OJ C 96, 22.4.2006, p. 39.

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