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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 55/01)

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

OJ C 46, 12.2.2011

Past publications

OJ C 38, 5.2.2011

OJ C 30, 29.1.2011

OJ C 13, 15.1.2011

OJ C 346, 18.12.2010

OJ C 328, 4.12.2010

OJ C 317, 20.11.2010

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Bundesverwaltungsgericht — Germany) — Land Baden-Württemberg v Metin Bozkurt

(Case C-303/08) [1]

(EEC-Turkey Association Agreement — Family reunification — Article 7, first paragraph, of Decision No 1/80 of the Association Council — Spouse of a Turkish worker who has cohabited with her for more than five years — Continuing existence of the right of residence after divorce — Conviction of the person concerned for violence towards his ex-wife — Abuse of rights)

(2011/C 55/02)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Land Baden-Württemberg

Defendant: Metin Bozkurt

Intervener: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Re:

Reference for a preliminary ruling — Bundesverwaltungsgericht — Interpretation of the second indent of the first paragraph of Article 7 of Decision No 1/80 of the Association Council of 19 September 1980 on the development of the Association between the European Economic Community and Turkey — Right of residence acquired, as a family member, by a Turkish national as the spouse of a Turkish worker duly registered as belonging to the labour force of a Member State — Retention of the right of residence in the case of divorce preceded by physical attacks on the ex-spouse which resulted in a criminal conviction

Operative part of the judgment

1. *The first paragraph of Article 7 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council created by the Agreement establishing an Association between the European Economic Community and Turkey, is to be interpreted as meaning that a Turkish national such as the applicant in the main proceedings, who, as a member of the family of a Turkish worker who is duly registered as belonging to the labour force of a Member State and as a result of his residing with his spouse for a continuous period of at least five years, enjoys the rights relating to the legal status conferred on the basis of the second indent of that provision, does not lose those rights on account of his divorce, which took place after those rights were acquired.*

2. *It is not an abuse of rights for a Turkish national such as the applicant in the main proceedings to rely on a right legally acquired pursuant to the first paragraph of Article 7 of Decision No 1/80 even though the person concerned, after acquiring that right through his former wife, committed a serious offence against her which gave rise to a criminal conviction.*

   By contrast, Article 14(1) of Decision No 1/80 does not preclude a measure ordering the expulsion of a Turkish national who has been convicted of criminal offences, provided that his personal conduct constitutes a present, genuine and sufficiently serious threat to a fundamental interest of society. It is for the competent national court to assess whether that is the case in the main proceedings.

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[1] OJ C 247, 27.9.2008.

Judgment of the Court (Grand Chamber) of 7 December 2010 (reference for a preliminary ruling from the Hof van beroep te Brussel — Belgium) — Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers 'VEBIC' VZW v Raad voor de Mededinging, Minister van Economie

(Case C-439/08) [1]

(Competition policy — National proceedings — National competition authorities participating in judicial proceedings — Hybrid national competition authority being judicial and administrative in nature — Appeal against the decision of such an authority — Regulation (EC) No 1/2003)

(2011/C 55/03)

Language of the case: Dutch

Referring court

Hof van beroep te Brussel

Parties to the main proceedings

Appellant: VZW Vlaamse federatie van verenigingen van Brood- en Banketbakkers, Ijsbereiders en Chocoladebewerkers 'VEBIC' VZW

Respondents: Raad voor de Mededinging, Minister van Economie

Re:

Reference for a preliminary ruling — Hof van beroep te Brussel — Interpretation of Articles 2, 5, 15(1) and 35(3) of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the competition rules laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1) — Submission by national competition authorities of written observations and arguments of fact and of law in the course of an appeal against their decision — Plurality of authorities in a Member State

Operative part of the judgment

Article 35 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty must be interpreted as precluding national rules which do not allow a national competition authority to participate, as a defendant or respondent, in judicial proceedings brought against a decision that the authority itself has taken. It is for the national competition authorities to gauge the extent to which their intervention is necessary and useful having regard to the effective application of European Union competition law. However, if the national competition authority consistently fails to enter an appearance in such judicial proceedings, the effectiveness of Articles 101 TFEU and 102 TFEU is jeopardised.

In the absence of European Union rules, the Member States remain competent, in accordance with the principle of procedural autonomy, to designate the body or bodies of the national competition authority which may participate, as a defendant or respondent, in proceedings brought before a national court against a decision which the authority itself has taken, while at the same time ensuring that fundamental rights are observed and that European Union competition law is fully effective.

([1]) OJ C 313, 6.12.2008.

Judgment of the Court (First Chamber) of 16 December 2010 — Kahla/Thüringen Porzellan GmbH v Freistaat Thüringen, Federal Republic of Germany, European Commission

(Case C-537/08 P) ([1])

(Appeal — State aid — Commission decision finding aid to be incompatible with the common market and ordering its recovery — Principles of legal certainty and of the protection of legitimate expectations)

(2011/C 55/04)

Language of the case: German

Parties

Appellant: Kahla/Thüringen Porzellan GmbH (represented by: M. Schütte, S. Zühlke and P. Werner, Rechtsanwälte)

Other parties to the proceedings: Freistaat Thüringen (represented by: A. Weitbrecht and M. Núñez Müller, Rechtsanwälte), Federal Republic of Germany (represented by: M. Lumma and W. D. Plessing, acting as Agents), European Commission (represented by: V. Kreuschitz and K. Gross, acting as Agents, assisted by C. Koenig, professor)

Re:

Appeal brought against the judgment of the Court of First Instance (Fifth Chamber) delivered on 24 September 2008 in Case T-20/03 Kahla/Thüringen Porzellan GmbH, by which the Court of First Instance dismissed an action for the annulment of Commission Decision 2003/643/EC of 13 May 2003 on the State aid implemented by Germany for Kahla Porzellan GmbH and Kahla/Thüringen Porzellan GmbH (OJ 2003 L 227, p. 12), in so far as that decision concerns the financial assistance granted to Kahla/Thüringen Porzellan GmbH — Infringement of the principles of legal certainty and protection of legitimate expectations

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Kahla Thüringen Porzellan GmbH to pay the costs.*

([1]) OJ C 44, 21.2.2009.

Judgment of the Court (Second Chamber) of 9 December 2010 (reference for a preliminary ruling from the Rechtbank Assen — Netherlands) — Combinatie Spijker Infrabouw-De Jonge Konstruktie, van Spijker Infrabouw BV, de Jonge Konstruktie BV v Provincie Drenthe

(Case C-568/08) ([1])

(Public contracts — Procedures for reviewing the award of public works contracts — Directive 89/665/EEC — Duty of Member States to make provision for a review procedure — National legislation permitting a court hearing an application for interim measures to authorise a decision awarding a public contract which may subsequently be held contrary to European Union legal rules by the court hearing the substance of the case — Compatibility with the directive — Award of damages to the tenderers harmed — Conditions)

(2011/C 55/05)

Language of the case: Dutch

Referring court

Rechtbank Assen

Parties to the main proceedings

Applicants: Combinatie Spijker Infrabouw-De Jonge Konstruktie, Van Spijker Infrabouw BV, De Jonge Konstruktie BV

Defendant: Provincie Drenthe

Re:

Reference for a preliminary ruling — Rechtbank Assen — Interpretation of Article 1(1) and (3) and Article 2(1) and (6) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33), as amended by Directive 2007/66/EC — National legislation providing for parallel jurisdiction of civil courts and administrative courts which may result in conflicting decisions — Jurisdiction of the administrative courts limited to an appraisal of the tendering decision — Jurisdiction excluded in the case where a decision has been taken to award the contract to one of the tenderers — Award of damages

Operative part of the judgment

1. *Article 1(1) and (3) and Article 2(1) and (6) of Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, as amended by Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, do not preclude a system in which, in order to obtain a rapid decision, the only procedure available is characterised by the fact that it is geared to a rapid mandatory measure, that lawyers have no right to exchange views, that no evidence is, as a rule, presented other than in written form, that statutory rules on evidence are not applicable, and that the judgment does not lead to the final determination of the legal situation and does not form part of a decision-making process leading to such a final decision.*

2. *Directive 89/665, as amended by Directive 92/50, must be interpreted as not precluding a court hearing an application for interim measures, for the purposes of adopting a provisional measure, from carrying out an interpretation of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts which is, subsequently, classified as erroneous by the court hearing the substance of the case.*

3. *As regards State liability for damage caused to individuals by infringements of European Union (EU) law for which the State may be held responsible, the individuals harmed have a right to redress where the rule of EU law which has been infringed is intended to confer rights on them, the breach of that rule is sufficiently serious, and there is a direct causal link between the breach and the loss or damage sustained by the individuals. In the absence of any provisions of EU law in that area, it is for the internal legal order of each Member State, once those conditions have been complied with, to determine the criteria on the basis of which the damage arising from an infringement of EU law on the award of public contracts must be determined and estimated, provided the principles of equivalence and effectiveness are complied with.*

([1]) OJ C 69, 21.3.2009.

Judgment of the Court (Grand Chamber) of 7 December 2010 (references for a preliminary ruling from the Oberster Gerichtshof (Austria)) — Peter Pammer v Reederei Karl Schlüter GmbH & Co KG (C-585/08) and Hotel Alpenhof GesmbH v Oliver Heller (C-144/09)

(Joined Cases C-585/08 and C-144/09) ([1])

(Jurisdiction in civil and commercial matters — Regulation (EC) No 44/2001 — Article 15(1)(c) and (3) — Jurisdiction over consumer contracts — Contract for a voyage by freighter — Concept of 'package travel' — Contract for a hotel stay — Presentation of the voyage and the hotel on a website — Concept of activity 'directed to' the Member State of the consumer's domicile — Criteria — Accessibility of the website)

(2011/C 55/06)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicants: Peter Pammer (C-585/08), Hotel Alpenhof GesmbH (C-144/09)

Defendants: Reederei Karl Schlüter GmbH & Co KG (C-585/08), Oliver Heller (C-144/09)

Re:

Reference for a preliminary ruling — Oberster Gerichstshof (Austria) — Interpretation of Article 15(1)(c) and (3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) — Jurisdiction over consumer contracts — Minimum characteristics required of an internet site in order for the activities advertised on that site to be capable of being regarded as activities 'directed' to the Member State of the consumer's domicile

Operative part of the judgment

1. *A contract concerning a voyage by freighter, such as that at issue in the main proceedings in Case C-585/08, is a contract of transport which, for an inclusive price, provides for a combination of travel and accommodation within the meaning of Article 15(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.*

2. *In order to determine whether a trader whose activity is presented on its website or on that of an intermediary can be considered to be 'directing' its activity to the Member State of the consumer's domicile, within the meaning of Article 15(1)(c) of Regulation No 44/2001, it should be ascertained whether, before the conclusion of any contract with the consumer, it is apparent from those websites and the trader's overall activity that the trader was envisaging doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them.*

   The following matters, the list of which is not exhaustive, are capable of constituting evidence from which it may be concluded that the trader's activity is directed to the Member State of the consumer's domicile, namely the international nature of the activity, mention of itineraries from other Member States for going to the place where the trader is established, use of a language or a currency other than the language or currency generally used in the Member State in which the trader is established with the possibility of making and confirming the reservation in that other language, mention of telephone numbers with an international code, outlay of expenditure on an internet referencing service in order to facilitate access to the trader's site or that of its intermediary by consumers domiciled in other Member States, use of a top-level domain name other than that of the Member State in which the trader is established, and mention of an international clientele composed of customers domiciled in various Member States. It is for the national courts to ascertain whether such evidence exists.

   On the other hand, the mere accessibility of the trader's or the intermediary's website in the Member State in which the consumer is domiciled is insufficient. The same is true of mention of an email address and of other contact details, or of use of a language or a currency which are the language and/or currency generally used in the Member State in which the trader is established.

(1) OJ C 44, 21.2.2009
OJ C 153, 4.7.2009

Judgment of the Court (Second Chamber) of 16 December 2010 — European Commission v French Republic

(Case C-89/09) (1)

(Failure of a Member State to fulfil obligations — Freedom of establishment — Article 43 EC — Public health — Operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of own capital may be held by shareholders who are not professional biologists — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Objective of ensuring the professional independence of biologists — Objective of maintaining diversity of supply in the biomedical field — Consistency — Proportionality)

(2011/C 55/07)

Language of the case: French

Parties

Applicant: European Commission (represented by: G. Rozet and E. Traversa, Agents)

Defendant: French Republic (represented by: G. de Bergues and B. Messmer, Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 43 EC — Rules concerning the operation of bio-medical analysis laboratories — National legislation under which no more than 25 % of a company's capital may be held by shareholders not engaged in the relevant professional activity — Prohibition on holding shares in more than two companies operating jointly one or more biomedical analysis laboratories — Restrictions on freedom of establishment which may be justified by the objective of protection of public health and are proportionate

Operative part of the judgment

The Court:

1. *Declares that, by prohibiting biologists from holding shares in more than two companies formed in order to operate jointly one or more biomedical analysis laboratories, the French Republic has failed to fulfil its obligations under Article 43 EC;*

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

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

(1) OJ C 113, 16.05.2009.

Judgment of the Court (Third Chamber) of 22 December 2010 (reference for a preliminary ruling from the Court of Appeal (United Kingdom)) — The Commissioners for Her Majesty's Revenue and Customs v Weald Leasing Limited

(Case C-103/09) [1]

(Sixth VAT Directive — Concept of 'abusive practice' — Leasing transactions effected by a group of undertakings to spread the payment of non-deductible VAT)

(2011/C 55/08)

Language of the case: English

Referring court

Court of Appeal

Parties to the main proceedings

Appellants: The Commissioners for Her Majesty's Revenue and Customs

Respondent: Weald Leasing Limited

Re:

Reference for a preliminary ruling — Court of Appeal, London — Interpretation of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Concept of transactions constituting an abusive practice — Leases and Sub-leases by a group of undertakings making mostly exempt supplies in order to defer their VAT liability

Operative part of the judgment

1. *The tax advantage accruing from an undertaking's recourse to asset leasing transactions, such as those at issue in the main proceedings, instead of the outright purchase of those assets, does not constitute a tax advantage the grant of which would be contrary to the purpose of the relevant provisions 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, and of the national legislation transposing it, provided that the contractual terms of those transactions, particularly those concerned with setting the level of rentals, correspond to arm's length terms and that the involvement of an intermediate third party company in those transactions is not such as to preclude the application of those provisions, a matter which it is for the national court to determine. The fact that the undertaking does not engage in leasing transactions in the context of its normal commercial operations is irrelevant in that regard.*

2. *If certain contractual terms of the leasing transactions at issue in the main proceedings, and/or the intervention of an intermediate third party company in those transactions, constituted an abusive practice, those transactions must be redefined so as to re-establish the situation that would have prevailed in the absence of the elements of those contractual terms which were abusive and/or in the absence of the intervention of that company.*

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[1] OJ C 129, 06.06.2009.

Judgment of the Court (Second Chamber) of 16 December 2010 (reference for a preliminary ruling from the Raad van State (Netherlands)) — Marc Michel Josemans v Burgemeester van Maastricht

(Case C-137/09) [1]

(Freedom to provide services — Free movement of goods — Principle of non-discrimination — Measure adopted by a local public authority which restricts access to coffee-shops to Netherlands residents — Marketing of 'soft' drugs — Marketing of non-alcoholic beverages and of food — Objective of combating drug tourism and the accompanying public nuisance — Public order — Protection of public health — Coherence — Proportionality)

(2011/C 55/09)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Marc Michel Josemans

Defendant: Burgemeester van Maastricht

Re:

Reference for a preliminary ruling — Raad van State — Interpretation of Articles 12 EC, 18 EC, 29 EC and 49 EC — Drug tourism — General municipal regulation prohibiting the admission of non-residents to coffee-shops selling narcotic drugs — Public order — Different treatment

Operative part of the judgment

1. *In the course of marketing narcotic drugs which are not distributed through channels strictly controlled by the competent authorities with a view to use for medical or scientific purposes, a coffee-shop proprietor may not rely on Articles 12 EC, 18 EC, 29 EC or 49 EC to object to municipal rules, such as those at issue in the main proceedings, which prohibit the admission of persons who are non-resident in the Netherlands to such establishments. As regards the activity of marketing non-alcoholic beverages and food in those establishments, Article 49 EC et seq. may be relied on by such a proprietor.*

2. *Article 49 EC must be interpreted as meaning that rules such as those at issue in the main proceedings constitute a restriction on the freedom to provide services laid down by the EC Treaty. That restriction is, however, justified by the objective of combating drug tourism and the accompanying public nuisance.*

(1) OJ C 141, 20.06.2009.

Judgment of the Court (Third Chamber) of 9 December 2010 (reference for a preliminary ruling from the First-tier Tribunal (Tax Chamber), United Kingdom) — Repertoire Culinaire Ltd v The Commissioners for Her Majesty's Revenue and Customs

(Case C-163/09) (1)

(Directive 92/83/EEC — Harmonisation of the structures of excise duties on alcohol and alcoholic beverages — Article 20, first indent, and Article 27(1)(e) and (f) — Cooking wine, cooking port and cooking cognac)

(2011/C 55/10)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber) (United Kingdom)

Parties to the main proceedings

Applicant: Repertoire Culinaire Ltd

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

Re:

Reference for a preliminary ruling — VAT and Duties Tribunal, London — Interpretation of Articles 20 and 27(1)(e) and (f) of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ 1992 L 316, p. 21) — Exemption from excise duty — Cooking wine, cooking port and cooking cognac containing salt and pepper

Operative part of the judgment

1. *Article 20, first indent, of Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages must be interpreted as meaning that the definition of 'ethyl alcohol' in that provision applies to cooking wine and cooking port.*

2. *In circumstances such as those at issue in the main proceedings, an exemption from the harmonised excise duty for cooking wine, cooking port and cooking cognac falls under Article 27(1)(f) of Directive 92/83.*

3. *If products such as the cooking wine, cooking port and cooking cognac at issue in the main proceedings, which have been treated as not being subject to excise duty or as being exempted from that duty under Directive 92/83 and released for consumption in the Member State of manufacture, are intended to be put on the market in another Member State, the latter must treat those products in the same way in its territory, unless there is concrete, objective and verifiable evidence that the first Member State has failed to apply the provisions of that directive correctly or that, in accordance with Article 27(1) thereof, it is justifiable to adopt measures to combat any evasion, avoidance or abuse which may arise in the field of exemptions and to ensure the correct and straightforward application of such exemptions.*

4. *Article 27(1)(f) of Directive 92/83 must be interpreted as meaning that the exemption contained in that provision may be made conditional on compliance with conditions such as those laid down by the national legislation at issue in the main proceedings, that is to say, the restriction of the persons authorised to make a claim for recovery, a four-month period for bringing such a claim and the establishment of a minimum amount of repayment, only if it is apparent from concrete, objective and verifiable evidence that those conditions are necessary to ensure the correct and straightforward application of the exemption in question and to prevent any evasion, avoidance or abuse. It is for the national court to ascertain whether that is true of the conditions laid down by that legislation.*

(1) OJ C 180, 1.8.2009.

Judgment of the Court (First Chamber) of 16 December 2010 (reference for a preliminary ruling from the Landgericht Berlin (Germany)) — Seydaland Vereinigte Agrarbetriebe GmbH & Co. KG v BVVG Bodenverwertungs- und -verwaltungs GmbH

(Case C-239/09) (1)

(State aid — Aid granted by the Federal Republic of Germany for the acquisition of land — Programme for land privatisation and restructuring of agriculture in the new Länder in Germany)

(2011/C 55/11)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Applicant: Seydaland Vereinigte Agrarbetriebe GmbH & Co. KG

Defendant: BVVG Bodenverwertungs- und -verwaltungs GmbH

Re:

Reference for a preliminary ruling — Landgericht Berlin — Interpretation of Article 87 EC — State aids — Privatisation of land in the new German Länder — Purchase of that land at a price, established according to national provisions providing for the determination of the market value of the land based on regional criteria, which is lower than their market value — Compatibility of those national provisions with Article 87 EC

Operative part of the judgment

Article 87 EC must be interpreted as not precluding a provision of national law laying down calculation methods for determining the value of agricultural and forestry land, offered for sale by public authorities in the context of a privatisation plan, such as those laid down in Paragraph 5(1) of the Land Purchase Order (Flächenerwerbsverordnung) of 20 December 1995, to the extent that those methods provide for the updating of the prices, where prices for such land are rising sharply, so that the price actually paid by the purchaser reflects, in so far as is possible, the market value of that land.

([1]) OJ C 220, 12.09.2009

Judgment of the Court (Fourth Chamber) of 9 December 2010 (reference for a preliminary ruling from the Cour d'appel de Bruxelles — Belgium)) — Fluxys SA v Commission de régulation de l'électricité et du gaz (CREG)

(Case C-241/09) ([1])

(Reference for a preliminary ruling — Jurisdiction of the Court — Partial withdrawal by the applicant in the main proceedings — Changed legal framework — Court's reply no longer necessary for the decision in the main proceedings — No need to adjudicate)

(2011/C 55/12)

Language of the case: French

Referring court

Cour d'appel de Bruxelles

Parties to the main proceedings

Applicant: Fluxys SA

Defendant: Commission de régulation de l'électricité et du gaz (CREG)

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles — Interpretation of Articles 1, 2 and 18 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) and Article 3 of Regulation (EC) No 1775/2005 of the European Parliament and of the Council of 28 September 2005 on conditions for access to the natural gas transmission networks (OJ 2005 L 289, p. 1) — Automatic revision of the rules for determining the total revenue of system operators in the event of the occurrence of exceptional circumstances during a regulatory period — Compatibility with Community law of a separate tariff regime for transit activities distinct from that applicable to 'conveyance' and storage

Operative part of the judgment

There is no need to answer the question referred for a preliminary ruling in Case C-241/09.

([1]) OJ C 205, 29.08.2009.

Judgment of the Court (Fourth Chamber) of 16 December 2010 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven — Netherlands) — Stichting Natuur en Milieu, Vereniging Milieudefensie, Vereniging Goede Waar & Co. v College voor de toelating van gewasbeschermingsmiddelen en biociden, formerly College voor de toelating van bestrijdingsmiddelen

(Case C-266/09) ([1])

(Environment — Plant protection products — Directive 91/414/EEC — Public access to information — Directives 90/313/EEC and 2003/4/EC — Temporal application — Concept of environmental information — Confidentiality of commercial and industrial information)

(2011/C 55/13)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Stichting Natuur en Milieu, Vereniging Milieudefensie, Vereniging Goede Waar & Co.

Defendant: College voor de toelating van gewasbeschermingsmiddelen en biociden, formerly College voor de toelating van bestrijdingsmiddelen

Other parties: Bayer CropScience BV, Nederlandse Stichting voor Fytofarmacie

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven (Netherlands) — Interpretation of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1) and Articles 2 and 4 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC (OJ 2003 L 41, p. 26) — Information communicated to the national authorities within the framework of a procedure for the authorisation of a plant protection product, enabling the determination of the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages — Confidentiality and public interest

Operative part of the judgment

1. *The term 'environmental information' in Article 2 of Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC must be interpreted as including information submitted within the framework of a national procedure for the authorisation or the extension of the authorisation of a plant protection product with a view to setting the maximum quantity of a pesticide, a component thereof or reaction products which may be present in food or beverages.*

2. *Provided that a situation such as that at issue in the main proceedings is not one of those listed in the second paragraph of Article 14 of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market, the first paragraph of Article 14 of that directive must be interpreted as being capable of application only in so far as the obligations under Article 4(2) of Directive 2003/4 are not affected.*

3. *Article 4 of Directive 2003/4 must be interpreted as meaning that the balancing exercise it prescribes between the public interest served by the disclosure of environmental information and the specific interest served by a refusal to disclose must be carried out in each individual case submitted to the competent authorities, even if the national legislature were by a general provision to determine criteria to facilitate that comparative assessment of the interests involved.*

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 16 December 2010 (reference for a preliminary ruling from the Court of Session (Scotland), Edinburgh — United Kingdom) — MacDonald Resorts Limited v The Commissioners for Her Majesty's Revenue & Customs

(Case C-270/09) ([1])

(VAT — Sixth Directive 77/388/EEC — Exemptions — Article 13(B)(b) — Letting of immovable property — Sale of contractual rights convertible into usage rights for timeshare holiday accommodation)

(2011/C 55/14)

Language of the case: English

Referring court

Court of Session (Scotland), Edinburgh

Parties to the main proceedings

Applicant: MacDonald Resorts Limited

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

Re:

Reference for a preliminary ruling — Court of Session (Scotland) — Interpretation of Articles 9(2)(a) and 13B(b) of Directive 77/388/EEC: Sixth Council Directive of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Concept of exemption for leasing or letting of immovable property — Sale, by a timeshare club, of points giving the right to use holiday accommodation during a given year on a part-time basis

Operative part of the judgment

1. *Supplies of services effected by an operator such as the applicant in the main proceedings under a scheme such as the 'Options Scheme' at issue in the main proceedings must be classified at the time when the customer participating in such a scheme converts the rights he initially acquired into a service offered by that operator. Where those rights are converted into hotel accommodation or into a right to temporarily use a property, those supplies are supplies of services connected with immovable property within the meaning of Article 9(2)(a) 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 2001/115/EC of 20 December 2001, which are performed at the place where the hotel or that property is situated.*

2. *Under a scheme such as the 'Options Scheme' at issue in the main proceedings, when the customer converts the rights he initially acquired into a right to temporarily use a property, the supply of services concerned constitutes the letting of immovable property within the meaning of Article 13B(b) of Sixth Directive 77/388, as amended by Directive 2001/115 (now Article 135(1)(l) of Council Directive 2006/112/EC of 28 December 2006 on the common system of value added tax). However, that provision does not prevent Member States from excluding that supply from exemption.*

([1]) OJ C 267, 7.11.2009.

Judgment of the Court (Second Chamber) of 22 December 2010 (reference for a preliminary ruling from the Kammergericht, Berlin — Germany) — DEB Deutsche Energiehandels-und Beratungsgesellschaft mbH v Bundesrepublik Deutschland

(Case C-279/09) ([1])

(Effective judicial protection of rights derived from European Union law — Right of access to a court — Legal aid — National legislation refusing legal aid to legal persons in the absence of 'public interest')

(2011/C 55/15)

Language of the case: German

Referring court

Kammergericht, Berlin

Parties to the main proceedings

Applicant: DEB Deutsche Energiehandels-und Beratungsgesellschaft mbH

Defendant: Bundesrepublik Deutschland

Re:

Reference for a preliminary ruling — Kammergericht Berlin — Interpretation of the principle of effectiveness — Compatibility with that principle of national rules refusing legal aid to legal persons in the absence of 'public interest' — Action seeking to establish the liability of a Member State for delay in transposing Community directives

Operative part of the judgment

The principle of effective judicial protection, as enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that it is not impossible for legal persons to rely on that principle and that aid granted pursuant to that principle may cover, inter alia, dispensation from advance payment of the costs of proceedings and/or the assistance of a lawyer.

In that connection, it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts which undermines the very core of that right; whether they pursue a legitimate aim; and whether there is a reasonable relationship of proportionality between the means employed and the legitimate aim which it is sought to achieve.

In making that assessment, the national court must take into consideration the subject matter of the litigation; whether the applicant has a reasonable prospect of success; the importance of what is at stake for the applicant in the proceedings; the complexity of the relevant law and procedure; and the applicant's capacity to represent himself effectively. In order to assess the proportionality, the national court may also take account of the amount of the costs of the proceedings in respect of which advance payment must be made and whether or not those costs might represent an insurmountable obstacle to access to the courts.

With regard more specifically to legal persons, the national court may take account of their situation. The court may therefore take into consideration, inter alia, the form of the legal person in question and whether it is profit-making or non-profit-making; the financial capacity of the partners or shareholders; and the ability of those partners or shareholders to obtain the sums necessary to institute legal proceedings.

(1) OJ C 267, 7.11.2009.

Judgment of the Court (Grand Chamber) of 7 December 2010 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Criminal proceedings against R.

(Case C-285/09) (1)

***(Sixth VAT Directive — Article 28c(A)(a)* — Evasion of VAT — Refusal to grant an exemption of VAT on intra-Community supplies of goods — Vendor's active participation in the fraud — Powers of the Member States in connection with the prevention of potential tax evasion, avoidance and abuse)**

(2011/C 55/16)

Language of the case: German

Referring court

Bundesgerichtshof

Party in the main criminal proceedings

R.

In the presence of: Generalbundesanwalt beim Bundesgerichtshof, Finanzamt Karlsruhe-Durlach

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 28c(A)(a) 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), as amended — Evasion of VAT — Refusal to grant an exemption of turnover tax on intra-Community supplies of goods — Vendor's active participation in the fraud

Operative part of the judgment

In circumstances such as those at issue in the main proceedings, in which an intra-Community supply of goods has actually taken place, but when, at the time of that supply, the supplier concealed the identity of the true purchaser in order to enable the latter to evade payment of value added tax, the Member State of departure of the intra-Community supply may, pursuant to its powers under the first part of the sentence in Article 28c(A) 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 2000/65/EC of 17 October 2000, refuse to allow an exemption in respect of that transaction.

(1) OJ C 267, 7.11.2009.

Judgment of the Court (Fourth Chamber) of 9 December 2010 (reference for a preliminary ruling from the Hof van Cassatie van België — Belgium) — Vlaamse Gemeenschap v Maurits Baesen

(Case C-296/09) [1]

(Social security — Regulation (EEC) No 1408/71 — Article 13(2)(d) — Concept of 'persons treated as' civil servants — Employment contract with a public authority)

(2011/C 55/17)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Vlaamse Gemeenschap

Defendant: Maurits Baesen

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Article 13(2)(a) and (d) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to their families moving within the Community (OJ, English Special Edition 1971(II), p. 416.) — Civil servants and persons treated as such — Concept — Person who has concluded an employment contract with a public authority

Operative part of the judgment

The meaning of 'civil servants' and 'persons to be treated as such', as referred to in Article 13(2)(d) of Council Regulation (EEC) No 1408/71 of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community, as amended by Council Regulation (EEC) No 1390/81 of 12 May 1981, is to be determined solely by reference to the national law of the Member State to which the administration employing the person concerned is subject and a person in the situation of the respondent in the main proceedings, who, in a Member State, is subject partly to the social security scheme for civil servants and partly to the social security scheme for employed persons, may thus be subject, in accordance with the provision made by Article 13(2)(d) of Regulation No 1408/71, only to the legislation of the Member State to which the administration employing that person is subject.

[1] OJ C 267, 7.11.2009.

Judgment of the Court (Second Chamber) of 9 December 2010 (reference for a preliminary ruling from the Raad van State — Netherlands) — Staatssecretaris van Justitie v F. Toprak (C-300/09), I. Oguz (C-301/09)

(Joined Cases C-300/09 and C-301/09) [1]

(EEC-Turkey Association Agreement — Freedom of movement for workers — Standstill rule in Article 13 of Decision No 1/80 of the Association Council — Prohibition for Member States to introduce new restrictions on access to the labour market)

(2011/C 55/18)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Staatssecretaris van Justitie

Defendants: F. Toprak (C-300/09), I. Oguz (C-301/09)

Re:

Reference for a preliminary ruling — Raad van State — Interpretation of Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, taken by the Association Council set up under the Agreement establishing an Association between the European Economic Community and Turkey — Standstill rule — Scope — Member States prohibited from introducing new restrictions on access to the labour market — Meaning of 'new restriction'

Operative part of the judgment

In circumstances such as those of the cases in the main proceedings, concerning a national provision on the acquisition of a residence permit by Turkish workers, Article 13 of Decision No 1/80 of 19 September 1980 on the development of the Association, adopted by the Association Council established by the Agreement establishing an Association between the European Economic Community and Turkey, must be interpreted as meaning that a tightening of a provision introduced after 1 December 1980, which provided for a relaxation of the provision applicable on 1 December 1980, constitutes a 'new restriction' within the meaning of that article, even where that tightening does not make the conditions governing the acquisition of that permit more stringent than those which resulted from the provision in force on 1 December 1980, this being a matter for the national court to determine.

[1] OJ C 267, 7.11.2009.

Judgment of the Court (First Chamber) of 16 December 2010 (reference for a preliminary ruling from the Nejvyšší správní soud — Czech Republic) — Skoma-Lux sro v Celní ředitelství Olomouc

(Case C-339/09) [1]

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Headings 2204 and 2206 — Beverage fermented on the basis of fresh grapes — Alcohol content of 15,8 % to 16,1 % by volume — Addition of corn alcohol and beet sugar during the course of production)

(2011/C 55/19)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Skoma-Lux sro

Defendant: Celní ředitelství Olomouc

Re:

Reference for a preliminary ruling — Nejvyšší správní soud — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Regulation (EC) No 1789/2003 of 11 September 2003 (OJ 2003 L 281, p. 1) — Red dessert wine Kagor — Classification under heading 2204 or heading 2206 of the combined nomenclature

Operative part of the judgment

Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, as amended by Commission Regulation (EC) No 1719/2005 of 27 October 2005, must be interpreted as meaning that a beverage fermented on the basis of fresh grapes, sold in 0.75 litre bottles, with an alcohol content of 15,8 % to 16,1 % by volume, to which beet sugar and corn alcohol have been added during the course of its production, must be classified under heading 2206 of the Combined Nomenclature in Annex I to that regulation.

[1] OJ C 282, 21.11.2009.

Judgment of the Court (Fifth Chamber) of 9 December 2010 — European Commission v Kingdom of Spain

(Case C-340/09) [1]

(Failure of a Member State to fulfil obligations — Directive 1999/22/EC — Article 4(2) to (5) — Keeping of wild animals — Zoos)

(2011/C 55/20)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and D. Recchia, Agents)

Defendant: Kingdom of Spain (represented by: B. Plaza Cruz and N. Díaz Abad, Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Article 4(2), (3), (4) and (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos (OJ 1999 L 94, p. 24)

Operative part of the judgment

The Court:

1. *Declares that, by failing to take, within the period prescribed, all the measures necessary with respect to the zoos which are the subject of the present action in the Autonomous Communities of Aragon, Asturias, the Balearic Islands, the Canary Islands, Cantabria, Castile and Leon, Valencia, Extremadura and Galicia concerning the inspection, licensing and, if appropriate, the closure of those establishments in accordance with Article 4(2), to (5) of Council Directive 1999/22/EC of 29 March 1999 relating to the keeping of wild animals in zoos, the Kingdom of Spain has failed to fulfil its obligations under that directive;*

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

[1] OJ C 256, 24.10.2009.

Judgment of the Court (Third Chamber) of 16 December 2010 — Athinaïki Techniki AE v European Commission, Athens Resort Casino AE Symmetochon

(Case C-362/09 P) [1]

(Appeal — State aid — Complaint — Decision to take no further action on the complaint — Withdrawal of the decision to take no further action — Conditions governing the lawfulness of withdrawal — Regulation (EC) No 659/1999)

(2011/C 55/21)

Language of the case: French

Parties

Appellant: Athinaïki Techniki AE (represented by: S. Pappas, dikigoros)

Other parties to the proceedings: European Commission (represented by: D. Triantafyllou, Agent), Athens Resort Casino AE Symmetochon (represented by: N. Korogiannakis, dikigoros)

Re:

Appeal against the order of the Court of First Instance (Fourth Chamber) of 29 June 2009 in Case T-94/05 *Athinaïki Techniki AE* v *Commission* by which the Court held that there was no longer any need to adjudicate on the action brought by the applicant following the Commission's withdrawal of the contested decision to take no further action on the applicant's complaint relating to State aid allegedly granted by the Hellenic Republic — Misinterpretation of the judgment of the Court of Justice in Case C-521/06 P *Athinaïki Techniki* — Conditions governing the lawfulness of the withdrawal of a Community administrative act — Failure to take administrative action in the context of the State aid investigation procedure not permissible — Principle of proportionality

Operative part of the judgment

The Court:

1. *Sets aside the order of the Court of First Instance of the European Communities of 29 June 2009 in Case T-94/05 Athinaïki Techniki v Commission;*

2. *Refers the case back to the General Court of the European Union;*

3. *Orders that the costs be reserved.*

([1]) OJ C 312, 19.12.2009.

Judgment of the Court (First Chamber) of 9 December 2010 (reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien — Austria) — Humanplasma GmbH v Republik Österreich

(Case C-421/09) ([1])

(Articles 28 EC and 30 EC — National rules prohibiting the importation of blood products provided from donations which were not entirely unpaid)

(2011/C 55/22)

Language of the case: German

Referring court

Landesgericht für Zivilrechtssachen Wien

Parties to the main proceedings

Applicant: Humanplasma GmbH

Defendant: Republik Österreich

Re:

Reference for a preliminary ruling — Landesgericht für Zivilrechtssachen Wien — Interpretation of Articles 28 EC and 30 EC — Compatibility with those provisions of national legislation prohibiting the importation of human blood where payment was made for the blood donation

Operative part of the judgment

Article 28 EC, read in conjunction with Article 30 EC, must be interpreted as precluding national legislation which provides that the importation of blood or blood components from another Member State is permitted only on the condition, which is also applicable to national products, that the donations of blood on which those products are based were made not only without any payment being made to the donors but also without any reimbursement of the costs incurred by them in connection with those donations.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 16 December 2010 (reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands)) — Euro Tyre Holding BV v Staatssecretaris van Financiën

(Case C-430/09) ([1])

(*Sixth VAT Directive* — Article 8(1)(a) and (b), Article 28a(1)(a), Article 28b(A)(1) and the first subparagraph of Article 28c(A)(a) — Exemption of supplies of goods dispatched or transported within the European Union — Successive supplies of the same goods giving rise to a single intra-Community dispatch or transport)

(2011/C 55/23)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Euro Tyre Holding BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Articles 8(1)(a) and (b), Article 28a(1)(a), Article 28b(A)(1) and Article 28c(A)(a) 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) — Exemption of supplies of goods dispatched or transported within the Community — Successive supplies of the same goods giving rise to a single intra-Community dispatch or transport of goods

Operative part of the judgment

When goods are the subject of two successive supplies between different taxable persons acting as such, but of a single intra-Community transport, the determination of the transaction to which that transport should be ascribed, namely the first or second supply — given that that transaction therefore falls within the concept of an intra-Community supply for the purposes of the first subparagraph of Article 28c(A)(a) 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 96/95/EC of 20 December 1996, read in conjunction with Article 8(1)(a) and (b), the first subparagraph of Article 28a(1)(a), and Article 28b(A)(1) of that directive — must be conducted in the light of an overall assessment of all the circumstances of the case in order to establish which of those two supplies fulfils all the conditions relating to an intra-Community supply.

In circumstances such as those at issue in the main proceedings, in which the first person acquiring the goods, having obtained the right to dispose of the goods as owner in the Member State of the first supply, expresses his intention to transport those goods to another Member State and presents his value added tax identification number attributed by that other State, the intra-Community transport should be ascribed to the first supply, on condition that the right to dispose of the goods as owner has been transferred to the second person acquiring the goods in the Member State of destination of the intra-Community transport. It is for the referring court to establish whether that condition has been fulfilled in the case pending before it.

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Third Chamber) of 22 December 2010 — European Commission v Republic of Austria

(Case C-433/09) ([1])

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — VAT — Taxable amount — Tax on the delivery of vehicles not yet registered in the Member State based on their value and their average consumption — 'Normverbrauchsabgabe')

(2011/C 55/24)

Language of the case: German

Parties

Applicant: European Commission (represented by: D. Triantafyllou, Agent)

Defendant: Republic of Austria (represented by: E. Riedl and C. Pesendorfer, Agents)

Re:

Failure of Member State to fulfil obligations — Infringement of Articles 78 and 79 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Sale of a motor vehicle — Inclusion in the taxable amount of a tax on the delivery of vehicles not yet registered in the Member State concerned on the basis of their value and their average consumption ('Normverbrauschasbgage')

Operative part of the judgment

The Court:

1. *Declares that, by including the standard consumption tax ('Normverbrauchsabgabe') in the taxable amount of value added tax levied in Austria on the delivery of a motor vehicle, the Republic of Austria has failed to fulfil its obligations under Article 78 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.*

2. *Dismisses the action for the remainder.*

3. *Orders the Commission and the Republic of Austria to bear their own costs.*

([1]) OJ C 24 of 30.1.2010.

Judgment of the Court (Second Chamber) of 22 December 2010 (reference for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo No 3 de A Coruña (Spain) and the Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra (Spain)) — Rosa María Gavieiro Gavieiro (C-444/09), Ana María Iglesias Torres (C-456/09) v Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia

(Joined Cases C-444/09 and C-456/09) ([1])

(Social Policy — Directive 1999/70/EC — Clause 4 of the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Principle of non-discrimination — Application of the framework agreement to the interim staff of an Autonomous Community — National rules establishing different treatment in respect of the award of a length-of-service increment on the basis of the temporary nature of the employment relationship — Obligation to recognise, with retrospective effect, the right to the length-of-service increment)

(2011/C 55/25)

Language of the case: Spanish

Referring courts

Juzgado de lo Contencioso-Administrativo No 3 de A Coruña and Juzgado de lo Contencioso-Administrativo No 3 de Pontevedra

Parties to the main proceedings

Applicants: Rosa María Gavieiro Gavieiro (C-444/09), Ana María Iglesias Torres (C-456/09)

Defendant: Consellería de Educación e Ordenación Universitaria de la Xunta de Galicia

Re:

Reference for a preliminary ruling — Juzgado Contencioso Administrativo de A Coruña — Interpretation of Clause 4(4) of the Annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43) — Principle of non-discrimination — Meaning of 'different length-of-service qualifications' — National legislation establishing different treatment in relation to the award of a length-of-service increment purely on the basis of the temporary nature of the contract

Operative part of the judgment

1. *A member of the interim staff of the Autonomous Community of Galicia, such as the applicant in the main proceedings, falls within the scope ratione personae of Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, and that of the framework agreement on fixed term work, concluded on 18 March 1999, which is in the Annex to that directive.*

2. *A length-of-service increment such as that at issue in the main proceedings is, as an employment condition, covered by clause 4(1) of the framework agreement on fixed-term work annexed to Directive 1999/70. Consequently, fixed-term workers may contest treatment which, with regard to payment of that increment, is less favourable than that which is given to permanent workers in a comparable situation and for which there is no objective justification. The temporary nature of the employment relationship of certain public servants is not, in itself, capable of constituting an objective ground within the meaning of that clause of the framework agreement.*

3. *The mere fact that a national provision such as Article 25(2) of Law 7/2007 on the basic regulations relating to public servants (Ley 7/2007 del Estatuto Básico del empleado público) of 12 April 2007 contains no reference to Directive 1999/70 does not preclude that provision from being regarded as a national measure transposing the directive.*

4. *Clause 4(1) of the framework agreement on fixed-term work, annexed to Directive 1999/70, is unconditional and sufficiently precise for interim civil servants to be able to rely on it as against the State before a national court in order to obtain recognition of their entitlement to length-of-service increments, such as the three-yearly increments at issue in the main proceedings, in respect of the period starting with the date by which Member States should have transposed Directive 1999/70 and ending with the date of entry into force of the national law transposing that directive into the domestic law of the Member State concerned, subject to compliance with the relevant provisions of national law concerning limitation.*

5. *Even though the national legislation transposing Directive 1999/70 contains a provision which, whilst recognising the right of interim civil servants to be paid the three-yearly length-of-service increments, excludes the retrospective application of that right, the competent authorities of the Member State concerned are obliged, under European Union law and in relation to a provision of the framework agreement on fixed-term work, annexed to Directive 1999/70, having direct effect, to give that right to payment of the increments retrospective effect to the date by which the Member States should have transposed Directive 1999/70.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (Second Chamber) of 16 December 2010 — AceaElectrabel Produzione SpA v European Commission, Electrabel SA

(Case C-480/09 P) ([1])

(Appeal — State aid — Aid declared compatible with the common market — Condition requiring prior repayment by the beneficiary of earlier aid declared unlawful — Concept of 'economic unit' — Joint control by two separate parent companies — Distortion of the pleas in law relied on in the application — Errors and defective reasoning)

(2011/C 55/26)

Language of the case: Italian

Parties

Appellant: AceaElectrabel Produzione SpA (represented by: L. Radicati di Brozolo and M. Merola, avvocati)

Other parties to the proceedings: European Commission (represented by: V. Di Bucci, Agent), Electrabel SA (represented by: L. Radicati di Brozolo and M. Merola, avvocati)

Re:

Appeal against the judgment of the Court of First Instance (First Chamber) of 8 September 2009 in Case T 303/05 *ACEAElectrabel Produzione SpA* v *Commission* by which the Court of First Instance dismissed the application for annulment of Commission Decision 2006/598/EC of 16 March 2005 concerning State aid that Italy (Regione Lazio) intends to grant for the reduction of greenhouse gas emissions (OJ 2006 L 244).

Operative part of the judgment

The Court:

1. *dismisses the appeal;*

2. *orders AceaElectrabel Produzione SpA, in addition to bearing its own costs, to pay those incurred by the European Commission;*

3. *orders Electrabel SA to bear its own costs.*

([1]) OJ C 24, 30.1.2010.

Judgment of the Court (First Chamber) of 9 December 2010 (reference for a preliminary ruling from the Bundesfinanzhof, Germany) — Minerva Kulturreisen GmbH v Finanzamt Freital

(Case C-31/10) ([1])

(Sixth VAT Directive — Article 26 — Special scheme for travel agents and tour operators — Scope — Sale of opera tickets without the provision of supplementary services)

(2011/C 55/27)

Language of the case: German

Referring court

Bundesfinanzhof (Germany)

Parties to the main proceedings

Applicant: Minerva Kulturreisen GmbH

Defendant: Finanzamt Freital

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 26 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) — Special scheme for travel agents — Sale of opera tickets without the provision of supplementary services

Operative part of the judgment

Article 26 of Sixth Council Directive 77/338/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment is to be interpreted as not applying to the sale by a travel agent of opera tickets in isolation, without the provision of a travel service.

([1]) OJ C 100, 17.4.2010.

Judgment of the Court (Fourth Chamber) of 22 December 2010 (reference for a preliminary ruling from the Tribunal de première instance de Bruxelles — Belgium) — Corman SA v Bureau d'intervention et de restitution belge (BIRB)

(Case C-131/10) ([1])

(Protection of the European Union's financial interests — Regulation (EC, Euratom) No 2988/95 — Article 3 — Limitation period for bringing proceedings — Time limit — Sectoral rules — Regulation (EC) No 2571/97 — Different application of the limitation rules in the case of an irregularity committed by the recipient of a subsidy or by the persons with whom the recipient has entered into contracts)

(2011/C 55/28)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicant: Corman SA

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

Re:

Reference for a preliminary ruling — Tribunal de première instance de Bruxelles — Interpretation of Article 3(1) and (3) of Council Regulation No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) — Determination of the limitation period for bringing proceedings — Applicability of the relevant sectoral Community provisions or the relevant national provisions — Different application of the limitation rules where an irregularity is committed by the recipient of the subsidy and where one is committed by persons with whom the recipient has entered into contracts?

Operative part of the judgment

1. *Since it does not lay down a limitation rule for bringing proceedings applicable to the clearing to an appropriate account of securities provided in tendering procedures in the butter, concentrated butter and cream market, Commission Regulation (EC) No 2571/97 of 15 December 1997 on the sale of butter at reduced prices and the granting of aid for cream, butter and concentrated butter for use in the manufacture of pastry products, ice-cream and other foodstuffs does not constitute sectoral rules providing for a 'shorter period' within the meaning of the second sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests. The four year limitation period established in the first sentence of the first subparagraph of Article 3(1) of Regulation No 2988/95 therefore applies to the clearing to an appropriate account of such securities, subject, however, to the possibility retained by the Member States, under Article 3(3) of the regulation, of providing for longer limitation periods.*

2. *When bringing proceedings concerning an irregularity within the meaning of Article 1 of Regulation No 2988/95, Member States retain the possibility of applying longer limitation periods within the meaning of Article 3(3) of that regulation, which extends, in the context of Regulation No 2571/97, to situations in which the irregularities for which the successful tenderer is liable were committed by the persons with whom the tenderer has entered into contracts.*

([1]) OJ C 148, 5.6.2010.

Judgment of the Court (Seventh Chamber) of 16 December 2010 — European Commission v Kingdom of the Netherlands

(Case C-233/10) ([1])

(Failure of a Member State to fulfil obligations — Directive 2007/44/EC — Prudential assessment of acquisitions and increase of holdings in the financial sector — Procedural rules and evaluation criteria)

(2011/C 55/29)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: A. Nijenhis and H. te Winkel, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C. Wissels, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the period prescribed, the provisions necessary to comply with Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ 2007 L 247, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;*

2. *Orders the Kingdom of the Netherlands to pay the costs.*

([1]) OJ C 195, 17.07.2010.

Judgment of the Court (First Chamber) of 22 December 2010 (reference for a preliminary ruling from the Court of Appeal of England and Wales (Civil Division) — United Kingdom) — Barbara Mercredi v Richard Chaffe

(Case C-497/10 PPU) ([1])

(Judicial cooperation in civil matters — Regulation (EC) No 2201/2003 — Matrimonial matters and parental responsibility — Child whose parents are not married — Concept of 'habitual residence' of an infant — Concept of 'rights of custody')

(2011/C 55/30)

Language of the case: English

Referring court

Court of Appeal of England and Wales (Civil Division)

Parties to the main proceedings

Applicant: Barbara Mercredi

Defendant: Richard Chaffe

Re:

Reference for a preliminary ruling — Court of Appeal (England & Wales) (Civil Division) — Interpretation of Articles 8 and 10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (OJ 2003 L 338, p. 1) — Concept of habitual residence — Child born in the United Kingdom of a British father and French mother with the nationality of the mother, the parents being unmarried — Child removed to Reunion by the mother — Lawful removal when it took place because the mother then had parental responsibility for the child — Subsequent application for parental responsibility, shared custody and access brought by the father before the British courts — Order of the High Court ordering the return of the child to the United Kingdom — Order challenged by the mother on the ground that the child was no longer habitually resident in the United Kingdom when the court was seised

Operative part of the judgment

1. *The concept of 'habitual residence', for the purposes of Articles 8 and 10 of Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, must be interpreted as meaning that such residence corresponds to the place which reflects some degree of integration by the child in a social and family environment. To that end, where the situation concerned is that of an infant who has been staying with her mother only a few days in a Member State — other than that of her habitual residence — to which she has been removed, the factors which must be taken into consideration include, first, the duration, regularity, conditions and reasons for the stay in the territory of that Member State and for the mother's move to that State and, second, with particular reference to the child's age, the mother's geographic and family origins and the family and social connections which the mother and child have with that Member State. It is for the national court to establish the habitual residence of the child, taking account of all the circumstances of fact specific to each individual case.*

   If the application of the abovementioned tests were, in the case in the main proceedings, to lead to the conclusion that the child's habitual residence cannot be established, which court has jurisdiction would have to be determined on the basis of the criterion of the child's presence, under Article 13 of the Regulation.

2. *Judgments of a court of a Member State which refuse to order the prompt return of a child under the Hague Convention of 25 October 1980 on the civil aspects of international child abduction to the jurisdiction of a court of another Member State and which concern parental responsibility for that child have no effect on judgments which have to be delivered in that other Member State in proceedings relating to parental responsibility which were brought earlier and are still pending in that other Member State.*

([1]) OJ C 328, 04.12.2010.

Appeal brought on 24 November 2010 by Usha Martin Ltd against the judgment of the General Court (Fifth Chamber) delivered on 9 September 2010 in Case T-119/06: Usha Martin Ltd v Council of the European Union, European Commission

(Case C-552/10 P)

(2011/C 55/31)

Language of the case: English

Parties

Appellant: Usha Martin Ltd (represented by: V. Akritidis, Δικηγόρος, Y. Melin, avocat, E. Petritsi, Δικηγόρος)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

1. Set aside in its entirety the aforementioned Judgement of the General Court (Fifth Chamber) of 9 September 2010 in Case T-119/06;

2. Accept, by giving a final judgement itself, the application:

   (a) for annulment of Commission Decision of 22 December 2005 amending Commission Decision 1999/572/EC accepting undertakings in connection with the anti-dumping proceedings concerning imports of steel wire rope and cables originating in, inter alia, India [1] (the 'Contested Decision') insofar as it related to the Appellant and withdraws a minimum price undertaking previously in force, and

   (b) for annulment of Council Regulation (EC) No 121/2006 amending Council Regulation (EC) No 1858/2005 imposing a definitive anti-dumping duty on imports of steel ropes and cables originating in, inter alia, India [2] (the 'Contested Regulation') insofar as it relates to the Appellant and gives effect to the Contested Decision withdrawing a minimum price undertaking previously held by the Appellant;

   or, in the alternative, refer the matter back to the General Court.

3. Order the Council and the Commission, in addition to paying their own costs, to bear all costs occasioned to the Appellant in the course of the present proceedings and the proceedings before the General Court.

Pleas in law and main arguments

The appellant submits that the General Court committed errors in law at paragraphs 44 to 56 of the contested Judgement, in particular in finding that the lawfulness of the Commission Decision withdrawing the acceptance of an undertaking cannot, as such, be called into question by reference to the principle of proportionality by erroneously holding that: (i) the proportionality principle does not apply to the decision to withdraw an undertaking because such a decision is equivalent to the imposition of duties *per se*; and (ii) any breach is sufficient in itself to trigger withdrawal without such withdrawal being subject to the proportionality principle test.

The appellant also submits that the General Court erroneously assessed the facts of the case and heavily distorted them when it held that '*it is common ground between the parties that there was no compliance with the undertaking*' insofar as the said statement erroneously implies admittance by the Appellant of a breach of the undertaking, *quod non*, in the sense of Article 8 of the basic anti-dumping Regulation.

The applicant submits that the General Court erroneously concluded that the lawfulness of the withdrawal of the undertaking cannot be called into question by reference to the principle of proportionality either on the basis that any breach is sufficient to trigger withdrawal or by associating the withdrawal measure with a measure of imposing duties. In effect, the General Court erroneously considers that the principle of proportionality never applies at the level of withdrawal of an undertaking and fails to apply the test of 'manifest inappropriateness' of a measure, contrary to the established case law of the European Courts and contrary to the introductory recitals of the contested Judgement in particular paragraphs 44 to 47. The General Court erroneously concludes that withdrawal of an undertaking *per se* cannot be called into question as regards its lawfulness by virtue of the general principle of proportionality. In addition, by erroneously holding that there was common ground between the parties that there was no compliance with the undertaking, implying that there was breach of an undertaking in the sense of Article 8(9) of the basic anti-dumping Regulation, the General Court has manifestly distorted the facts of the case, as argued by the Appellant, and has therefore, erred in law by erroneously appraising the arguments of the Appellant.

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[1] OJ L 22, p. 54
[2] OJ L 22, p. 1

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 29 November 2010 — Deli Ostrich NV v Belgische Staat

(Case C-559/10)

(2011/C 55/32)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Applicant: Deli Ostrich NV

Defendant: Belgische Staat

Question referred

The Rechtbank van eerste aanleg te Antwerpen asks the Court of Justice to give a ruling on which tariff subheading should be applied, as at the date of the declaration of 22 October 2007, in respect of import duties on meat from camels which, indisputably, are not kept in captivity.

Action brought on 6 December 2010 — European Commission v Republic of Austria

(Case C-568/10)

(2011/C 55/33)

Language of the case: German

Parties

Applicant: European Commission (represented by: Maria Condou-Durande and W. Bogensberger, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by introducing rules under which students who are third-country nationals may be granted a work permit only after the labour-market situation in Austria has been examined in order to ensure that the vacancy cannot be filled by someone registered as unemployed, the Republic of Austria has failed to fulfil its obligations under Article 17(1) of Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; [1]

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission considers that the provisions of Austrian law systematically deny students who are third-country nationals access to the labour market, in that they are issued a work permit for a vacant position only if a check has been previously carried out as to whether the position cannot be filled by a person registered as unemployed. Consequently, according to the Commission, the number of work permits issued for this category of persons is very low. For that reason, only 10 % of students who are third-country nationals, in comparison with 70 % of Austrian students, have the possibility to finance part of the costs of their studies by means of employment.

In the view of the Republic of Austria, these restrictions are justified. It claims that, because of its free access to university and low university fees, Austria is particularly attractive for third-country nationals. Due to their inadequate knowledge of German and lack of professional qualifications, they generally find employment in unqualified areas and thereby increase yet further the currently high unemployment rate in this sector.

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[1] OJ 2004 L 375, p. 12.

Action brought on 9 December 2010 — European Commission v Kingdom of the Netherlands

(Case C-576/10)

(2011/C 55/34)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: M. van Beek and C. Zadra, Agents)

Defendant: Kingdom of the Netherlands

Form of order sought

— rule that, by failing to comply with the law of the European Union on public contracts, in particular Directive 2004/18/EC, [1] in the context of the award of a public works concession by the municipality of Eindhoven, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 2 and Title III of Directive 2004/18/EC;

— order the Kingdom of the Netherlands to pay the costs.

Pleas in law and main arguments

The Commission has concluded that the coooperation agreement which the municipality of Eindhoven entered into on 11 June 2007 with the company Hurks Bouw en Vastgoed B.V. is a public works concession within the terms of Article 1(3) of Directive 2004/18/EC.

In view of the fact that the public works concession has an estimated value which is greater than the applicable threshold value, it ought to have been the subject of a call for tenders in accordance with Directive 2004/18/EC, in particular Article 2 and Title III thereof. In addition, the public contracts awarded by Hurks Bouw en Vastgoed B.V. for works to an estimated value in excess of the applicable threshold value must be publicised in accordance with Articles 63 to 65 of Directive 2004/18/EC.

The fact that the municipality of Eindhoven did not apply Directive 2004/18/EC, and in particular Article 2 and Title III thereof, when awarding the public works concession in question to Hurks Bouw en Vastgoed B.V. leads the Commission to the conclusion that there has been a breach of that directive.

The Commission further concludes that, in the context of the award of a public works concession by the municipality of Eindhoven, the Kingdom of the Netherlands has failed to comply with its obligations under the European Union law on public contracts, and in particular those imposed by Article 2 and Title III of Directive 2004/18/EC.

(1) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Action brought on 16 December 2010 — European Commission v French Republic

(Case C-597/10)

(2011/C 55/35)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— declare that, failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 (1) on the assessment and management of flood risks, which aims to reduce damage to human health, the environment, cultural heritage and economic activity associated with floods in the Community, or, in any event, by failing to communicate those provisions to the Commission, France has failed to fulfil its obligations under that directive;

— order French Republic to pay the costs.

Pleas in law and main arguments

The period for the transposition of Directive 2007/60/EC expired on 25 November 2009. On the date on which the present action was brought, the defendant had not yet taken all the measures necessary to transpose the directive or, in any event, it had not notified the Commission thereof.

(1) Directive 2007/60/EC of the European Parliament and of the Council of 23 October 2007 on the assessment and management of flood risks (OJ 2007 L 288, p. 27).

GENERAL COURT

Judgment of the General Court of 13 January 2011 — IFAW Internationaler Tierschutz-Fonds v European Commission

(Case T-362/08) ([1])

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the carrying out of an industrial project in an area protected under Directive 92/43/EEC — Documents originating from a Member State — Objection on the part of the Member State — Partial refusal of access — Exception relating to the economic policy of a Member State — Article 4(5) to (7) of Regulation No 1049/2001)

(2011/C 55/36)

Language of the case: English

Parties

Applicant: IFAW Internationaler Tierschutz-Fonds gGmbH (Hamburg, Germany) (represented by: S. Crosby, Solicitor and S. Santoro, lawyer)

Defendant: European Commission (represented by: C. O'Reilly and P. Costa de Oliveira, Agents)

Interveners in support of the applicant: Kingdom of Denmark (represented by J. Bering Liisberg and B. Weis Fogh, Agents); Republic of Finland (represented initially by J. Heliskoski, M. Pere and H. Leppo, and later by J. Heliskoski, Agents); and Kingdom of Sweden (represented by K. Petkovska, A. Falk and S. Johannesson, Agents)

Re:

Annulment of the Commission's decision of 19 June 2008 partly refusing to grant the applicant access to certain documents transmitted to the Commission by the German authorities in connection with a procedure for the declassification of a site protected under Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders IFAW Internationaler Tierschutz-Fonds gGmbH to bear its own costs and to pay those incurred by the European Commission;*

3. *Orders the Kingdom of Denmark, the Republic of Finland and the Kingdom of Sweden to bear their own costs.*

([1]) OJ C 301, 22.11.2008.

Judgment of the General Court of 13 January 2011 — Park v OHIM — Bae (PINE TREE)

(Case T-28/09) ([1])

(Community trade mark — Revocation proceedings — Figurative Community mark PINE TREE — Genuine use of the mark — Articles 50(1)(a) and 55(1)(a) of Regulation (EC) No 40/04 (now Articles 51(1)(a) and 56(1)(a) of Regulation (EC) No 207/2009))

(2011/C 55/37)

Language of the case: German

Parties

Applicant: Mo-Hwa Park (Hillscheid, Germany) (represented by: P. Lee, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Chong-Yun Bae (Berlin, Germany) (represented by: A.-K. Warnecke and C. Donle, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 November 2008 (Case R 1882/2007-4) concerning revocation proceedings between Mr Mo-Hwa Park and Mr Chong-Yun Bae.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Mo-Hwa Park to pay the costs..*

([1]) OJ C 82, 4.4.2009.

Order of the General Court of 16 December 2010 — Kitou v EDPS

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

(Access to documents — Regulation (EC) No 1049/2001 — Regulation (EC) No 45/2001 — No need to adjudicate)

(2011/C 55/38)

Language of the case: French

Parties

Applicant: Erasmia Kitou (Brussels, Belgium) (represented by: S. Pappas, lawyer)

Defendant: European Data Protection Supervisor (EDPS) (represented by: H. Hijmans and V. Pérez Asinari, Agents)

Re:

Annulment of the decision of the EDPS of 3 February 2009 in Case No 2008-0600 concerning a complaint brought by Ms Kitou against the intention of the European Commission to reveal personal data.

Operative part of the order

1. *There is no need to adjudicate on the action.*

2. *The European Data Protection Supervisor (EDPS) is ordered to pay the costs.*

([1]) OJ C 153, 4.7.2009.

Order of the General Court of 15 December 2010 — Albertini and Others and Donnelly v European Parliament

(Joined Cases T-219/09 and T-326/09) ([1])

(Actions for annulment — Additional pension scheme for Members of the European Parliament — Amendment of the additional pension scheme — Measure of general scope — No individual concern — Inadmissibility)

(2011/C 55/39)

Language of the case: French

Parties

Applicants: Gabriele Albertini (Milan, Italy) and the 62 other Members or former Members of the European Parliament whose names appear in the annex to the order (Case T-219/09); and Brendan Donnelly (London, United Kingdom) (Case T-326/09) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: European Parliament (represented by: H. Krück, A. Pospíšilová Padowska and G. Corstens, and subsequently by N. Lorenz, A. Pospíšilová Padowska and G. Corstens, Agents)

Re:

Annulment of the decisions of the European Parliament of 9 March and 1 April 2009 amending the Additional Voluntary Pension Scheme for Members of the European Parliament in Annex VIII to the Rules governing the payment of expenses and allowances to Members of the European Parliament

Operative part of the order

1. *Cases T-219/09 and T-326/09 are joined for the purposes of the order.*

2. *The actions are dismissed as inadmissible.*

3. *Mr Gabrielle Albertini, the 62 other applicants listed in the annex and Mr Brendan Donnelly shall bear their own costs and pay those incurred by the European Parliament.*

([1]) OJ C 205, 29.8.2009.

Order of the General Court of 14 December 2010 — General Bearing v OHIM (GENERAL BEARING CORPORATION)

(Case T-394/09) ([1])

(Community trade mark — Application for Community word mark GENERAL BEARING CORPORATION — Absolute ground for refusal — Lack of distinctive character — Article 7(1)(b) of Regulation (EC) No 207/2009)

(2011/C 55/40)

Language of the case: English

Parties

Applicant: General Bearing Corp. (West Nyack, New York, United States) (represented by: A. Dellmeier-Beschorner, lawyer)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 16 July 2009 (Case R 73/2009-1), concerning an application for registration of the word sign GENERAL BEARING CORPORATION as a Community trade mark.

Operative part of the order

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

2. *General Bearing Corp. is to pay the costs.*

(1) OJ C 297, 5.12.2009.

Order of the General Court of 17 December 2010 — Marcuccio v Commission

(Case T-38/10 P) (1)

(Appeal — Civil service — Officials — Non-contractual liability — Reimbursement of recoverable expenses — Availability of a parallel remedy — Procedural defects — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2011/C 55/41)

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: C. Berardis-Kayser and L. Currall, agents, and A. Dal Ferro, lawyer)

Re:

Appeal against the order of the Civil Service Tribunal of the European Union (First Chamber) delivered on 10 November 2009 in Case F-70/07 Marcuccio v Commission seeking to have that order set aside.

Operative part of the order

1. *The appeal is dismissed.*

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

(1) OJ C 80, 27.3.2010.

Order of the General Court of 16 December 2010 — Meister v OHIM

(Case T-48/10 P) (1)

(Appeals — Civil service — Officials — Promotion — 2008 promotion procedure — Decision awarding points in the promotion procedure — Mention of points accumulated in previous promotion procedures — Distortion of the facts — Burden of costs — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2011/C 55/42)

Language of the case: German

Parties

Appellant: Herbert Meister (Muchamiel, Spain) (represented by: H.-J. Zimmermann, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: I. de Medrano Caballero and G. Faedo, acting as Agents, and D. Waelbroeck and E. Winter, lawyers)

Re:

Appeal against the order of the European Union Civil Service Tribunal (First Chamber) of 30 November 2009 in Case F-17/09 *Meister* v *OHIM* ECR-SC I-A-1-0000 and I-A-2-0000, seeking for that order to be set aside.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Herbert Meister is ordered to bear his own costs and pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) in the appeal proceedings.*

(1) OJ C 100, 17.4.2010.

Order of the President of the General Court of 7 December 2010 — ArcelorMittal Wire France and Others v Commission

(Case T-385/10 R)

(Application for interim measures — Competition — Commission decision imposing a fine — Bank guarantee — Application for suspension of operation of a measure — Financial loss — Absence of exceptional circumstances — No urgency)

(2011/C 55/43)

Language of the case: French

Parties

Applicants: ArcelorMittal Wire France (Bourg-en-Bresse, France); ArcelorMittal Fontaine (Fontaine-l'Évêque, Belgium); and ArcelorMittal Verderio Srl (Verderio Inferiore, Italy) (represented by: H. Calvet, O. Billard and M. Pittie, lawyers)

Defendant: European Commission (represented by: C. Giolito, L. Parpala and V. Bottka, Agents)

Re:

Application for suspension of operation of Article 2 of Commission Decision C(2010) 4387 final, of 30 June 2010, relating to a proceeding under Article 101 [TFEU] and Article 53 of the EEA Agreement (Case COMP/38.344 — Prestressing steel), as amended by Commission Decision C(2010) 6676 final of 30 September 2010.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 17 December 2010 — Uspaskich v Parliament

(Case T-507/10 P)

(Interim measures — Waiver of the immunity of a member of the European Parliament — Application for suspension of operation)

(2011/C 55/44)

Language of the case: Lithuanian

Parties

Applicant: Viktor Uspaskich (Kėdainiai, Lithuania) (represented by V Sviderskis, lawyer)

Defendant: European Parliament (represented by: N. Lorenz, A. Pospíšilová Padowska and L. Mašalaite, Agents)

Re:

Application to suspend the operation of the resolution of the European Parliament of 7 September 2010 waiving the applicant's immunity.

Operative part of the order

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

2. *Costs are reserved.*

Action brought on 26 August 2010 — Tecnimed v OHIM — Ecobrands (ZAPPER-CLICK)

(Case T-360/10)

(2011/C 55/45)

Language in which the application was lodged: English

Parties

Applicant: Tecnimed Srl (Vedano Olona, Italy) (represented by: M. Franzosi and V. Piccarreta, lawyers)

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

Other party to the proceedings before the Board of Appeal: Ecobrands Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 June 2010 in case R 1795/2008-4;

— Confirm the decision of the Cancellation Division of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 28 October 2010; and

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The word mark 'ZAPPER-CLICK' for goods in classes 5, 9 and 10 — Community trade mark registration No 3870284

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

Applicant for the declaration of invalidity of the Community trade mark: The applicant

Grounds for the application for a declaration of invalidity: Italian trade mark registration No 747249 of the word mark 'CLICK', for goods in class 10; Italian trade mark registration No 927574 of the word mark 'MOUSTI CLICK', for goods in class 10; Italian trade mark registration No 801404 of the word mark 'ECO-CLICK', for goods in class 10; Italian trade mark registration No 801405 of the word mark 'ZANZA CLICK', for goods in class 10; International trade mark registration No 825425 of the word mark 'MOUSTI CLICK', for goods in class 10; Non-registered trade mark of the word mark 'CLICK', protected in the United Kingdom; Non-registered trade mark of the word mark 'ZANZA CLICK', protected in the United Kingdom.

Decision of the Cancellation Division: Declaration of partial invalidity of the Community trade mark

Decision of the Board of Appeal: Annulled the decision of the Cancellation Division

Pleas in law: Infringement and misinterpretation of Article 52(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongfully excluded 'bad faith'. Infringement and misinterpretation of Rules 38(2), 39(2), 39(3) and 96(2) of Commission Regulation (EC) No 2868/95, as the Board of Appeal wrongfully related inadmissibility of the ground of action to the alleged omitted translation of the documents, and as it did not consider that the translation had been provided by the applicant. Misapplication of Articles 53(1)(a) and 8(1)(b) of Council Regulation (EC) No 207/2009, as the Board of Appeal misused its power. Violation and misinterpretation of Articles 53(1)(b) and 8(3) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongfully hold that misappropriation had to be excluded since the trademarks at issue were not identical. Violation of Articles 53(1)(c) and 8(4) of Council Regulation (EC) No 207/2009, as the Board of Appeal wrongly excluded passing off and wrongly stated that the file does not provide evidence about the way the product was presented on the market.

Action brought on 15 December 2010 — Quimitécnica.com and de Mello v Commission

(Case T-564/10)

(2011/C 55/46)

Language of the case: Portuguese

Parties

Applicants: Quimitécnica.com — Comércio e Indústria Química, SA (Lordelo, Portugal) and José de Mello — Sociedade Gestora de Participações Sociais, SA (Lisbon, Portugal) (represented by: J. Calheiros, lawyer)

Defendant: European Commission

Form of order sought

The applicants claim that the General Court should

— partially annul, in accordance with Article 264 of the TFEU, the Commission Decision, adopted by its accounting officer by letter dated 8 October 2010, with the reference BUDG/C5/MG s737983, in so far as it requires the financial guarantee to be provided by a bank with long-term 'AA' rating;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of their application, the applicants allege:

1. ***First plea, regarding breach of essential formalities — failure to state reasons for the Decision adopted on 8 October 2010.***

Based on this plea, the applicants claim that:

— Under Article 296 of the TFEU all acts, including decisions, must state the reasons on which they are based. The Decision adopted on 8 October 2010 does not state any reasons for the rating requirement of the bank issuing the guarantee.

— Considering the level of rating required, there should be such a statement of reasons. The requirement to state reasons is even greater in this case, where a discretionary, and not a circumscribed, power is being exercised.

— Furthermore, the Decision does not invoke any Community rule (even internal) on which such a requirement could be based. As the Decision lacks a statement of reasons it should, in this part, be annulled.

2. ***Second plea, regarding breach of the Treaty — the principle of proportionality.***

Based on this plea, the applicants claim that:

— Under Article 85 of Regulation (EC, EURATOM) No 2342/2002, to allow additional time for payment, 'in order to safeguard the Community's rights, the debtor [is to lodge] a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.' The interests that that guarantee is intended to protect, therefore, are the Community's rights, in this case the right to receive the amounts due.

— A first demand guarantee, along the lines of the model required by the Commission, issued by a credit institution, constitutes a proper and appropriate means of ensuring payment of the amounts due. Thus, the whole Portuguese legal system (and, in general, that of the other countries of the European Union) accepts the provision of a bank guarantee for the most diverse purposes, including to suspend the execution of judicial decisions.

— In the present case, the guarantee proposed by the applicants (and not accepted by the Commission) would be issued by the Banco Comercial Português, S.A., a credit institution having its head office in the European Union, subject to the rules of supervision and consolidation defined by the Community institutions. Thus, there seems to be no justification, in order to defend the Community's rights, for ruling out the possibility of the guarantee being issued by the said bank and requiring it to be issued by a bank with long-term 'AA' rating.

— Furthermore, the public is aware of the current situation in which the ratings of Portuguese banks have been recently affected by the change in the rating of the Portuguese Republic. Thus, at the moment, there is no bank based in Portugal that fulfils the rating criteria (long-term 'AA') required in the Commission Decision.

— Accordingly, the Commission Decision therefore does not fulfil the criterion of necessity (which constitutes an important dimension of the principle of proportionality) since, of the possible measures, the Commission opted for the one that, in the current circumstances, is most prejudicial to the interests of the applicants.

— Thus, there is a clear lack of proportionality between the requirement imposed by the Commission (guarantee issued by a European bank with long-term 'AA' rating) and the objective sought (protection of the right of the Commission to receipt of the amounts), so that the Decision of the Commission should, in this part, be annulled.

Action brought on 21 December 2010 — ThyssenKrupp Steel Europe v OHIM (Highprotect)

(Case T-565/10)

(2011/C 55/47)

Language in which the application was lodged: German

Parties

Applicant: ThyssenKrupp Steel Europe AG (Duisburg, Germany) (represented by U. Ulrich, lawyer)

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

Form of order sought

The applicant claims that the Court should:

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 September 2010 in Case R 1038/2010-1;

— Order OHIM to pay the costs of the proceedings, including those incurred in the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'Highprotect' for goods in Class 6.

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation No 207/2009, [1] since the trade mark concerned is not devoid of distinctive character and is not 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 15 December 2010 — Ertmer v OHIM — Caterpillar (erkat)

(Case T-566/10)

(2011/C 55/48)

Language in which the application was lodged: German

Parties

Applicant: Jutta Ertmer (Tatsungen, Germany) (represented by: A. von Mühlendahl and C. Eckhartt)

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

Other party to the proceedings before the Board of Appeal of OHIM: Caterpilla, Inc. (Illinois, USA)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 7 September 2010 in Case R 270/2010-1;

— dismiss the appeal lodged by Caterpillar Inc. on 17 February 2010 against the decision of the cancellation Division of OHIM of 8 January 2010 in Cancellation proceedings No 2504 C;

— order the defendant and Caterpillar Inc., if it decides to participate in the proceedings, 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: word mark 'erkat' for goods in Classes 7 and 42.

Proprietor of the Community trade mark: the applicant.

Applicant for the declaration of invalidity: Caterpillar Inc.

Grounds for the application for a declaration of invalidity: pursuant to Article 53(1)(a) the application was based on the national and Community word mark 'CAT', the national figurative marks and the Community figurative mark containing the word 'CAT', for goods and services in Classes 7 and 42.

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

Decision of the Board of Appeal: the appeal was upheld and the registered mark was declared invalid.

Pleas in law: Infringement of Article 8 in conjunction with Article 75 of Regulation (EC) No 207/2009, [1] since the contested decision does not show on which earlier mark or marks the Board of Appeal based its decision to grant the application of the other party and a key part of the grounds was copied from another decision; infringement of Article 8(1)(b) of Regulation (EC) No 207/2009, since there was no likelihood of confusion between the opposing marks; and infringement of Article 8(5) in conjunction with Article 75 of Regulation (EC) No 207/2009, since the earlier figurative marks do not have a reputation and there would be no detriment to, or unfair advantage taken of, the distinctive character or repute of those marks.

[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 23 December 2010 — Octapharma Pharmazeutika v EMA

(Case T-573/10)

(2011/C 55/49)

Language of the case: German

Parties

Applicant: Octapharma Pharmazeutika Produktionsgesellschaft mbH (Vienna, Austria) (represented by: I. Brinker, T. Holzmüller and Professor J. Schwarze, lawyers)

Defendant: European Medicines Agency

Form of order sought

— Annul the note of the European Medicines Agency (EMA) to the applicant of 21 October 2010, in so far as the recovery of excess fees amounting to EUR 180 700 was refused;

— Order the defendant to pay the costs of the proceedings in accordance with Article 87(2) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of its action, the applicant raises four pleas in law.

1. First plea: Infringement of the principle that the administration must act lawfully in conjunction with the legal rules applicable to the charging of fees

In that regard, the applicant claims that EMA refused the recovery of fees on the basis of an unlawful fee regulation issued by it. EMA exceeded its margin of appreciation, in so far as it based the contested decision on a fee regulation which infringes specific and general principles of fee calculation. The applicant claims that the fee regulation is in particular not covered by Regulation (EC) No 297/95 ([1]). The fee charged infringes the principles of adequate and moderate fee charging. Furthermore, it is clearly disproportionate to the fees charged for initial certification, annual re-certification and established administrative procedure.

2. Second plea: Infringement of the principle of proportionality

The applicant claims that there is an infringement of the principle of proportionality in the comparison with the fees for the other services offered by EMA. Although other certifications for plasma master files would involve a similar or greater administrative burden, significantly lower fees were fixed in relation to them. It is also apparent from a comparison with recent fee practice with regard to the administrative services accounted for here that the fee charged is disproportionate to the resulting burden.

3. Third plea: Infringement of the principle of the protection of legitimate expectations with regard to sudden changes in administrative behaviour

The applicant claims in the context of the third plea that EMA suddenly changed its fee practice in a way that was not foreseeable for the applicant and the other affected parties, and thereby infringed the principle of the protection of legitimate expectations. In particular, the defendant disregarded the applicable legal framework and its margin of appreciation in the calculation of the fees, so that the applicant can rely on the protection of its legitimate expectations. In the opinion of the applicant, it is particularly detrimental in that respect that EMA reverted to the old fee practice even before issuing the contested decision.

4. Fourth plea: Infringement of the duty of fair and consistent administration

The applicant claims in this respect that the sudden fee increase breaches the duty of fair and consistent administration codified in the 'Commission Code of good administrative behaviour for staff of the European Commission in their relations with the public' and resulting from the right to good administration in accordance with Article 41 of the Charter of fundamental rights of the European Union. In established EMA fee practice, there would otherwise be a significantly lower fee charged for the same administrative burden, based on a different method of calculation. It follows that the present case concerns an unjustified change in administrative behaviour. Moreover, the applicant claims that, in the light of the special temporal circumstances and the additional burden in comparison with the previous years, EMA should have responded to the applicant's case at least by way of an exceptional or transitional regulation.

([1]) Council Regulation (EC) No 297/95 of 10 February 1995 on fees payable to the European Agency for the Evaluation of Medicinal Products (OJ 1995 L 35, p. 1).

Action brought on 14 December 2010 — Moreda-Riviere Trefilerías v Commission

(Case T-575/10)

(2011/C 55/50)

Language of the case: Spanish

Parties

Applicant: Moreda-Riviere Trefilerías, S.A. (Gijón, Spain) (represented by F. González Díaz and A. Tresandi Blanco, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel); and

— order the European Commission to pay the costs.

Pleas in law and main arguments

In support of its appeal, the applicant relies on three pleas in law:

— first plea, based on breach of the principle of inalterability of the acts of the institutions and of the principle of good administration.

— second plea, based on the fact that the amended decision breached essential procedural requirements, in that it was adopted without the mandatory consultation of the Advisory Committee on Restrictive Practices and Dominant Positions, as required pursuant to Article 14 of Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).

— third plea, in the alternative, based on breach of the principle of non-discrimination in the fixing of the conditions of the payment of the fine and breach of the obligation to state the reasons on which the decision is based.

Action brought on 14 December 2010 — Trefilerías Quijano v Commission

(Case T-576/10)

(2011/C 55/51)

Language of the case: Spanish

Parties

Applicant: Trefilerías Quijano, S.A. (Los Corrales de Buelna, Spain) (represented by F. González Díaz and A. Tresandi Blanco, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel);

— in the alternative, annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, Article 2 of the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel) insofar as it entails an infringement of the principle of non-discrimination in not having extended to TQ the additional period for payment of the fine, and fails to state reasons; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those raised in Case T-575/10 *Moreda-Riviere Trefilerías v Commission.*

Action brought on 14 December 2010 — Trenzas y Cables de Acero v Commission

(Case T-577/10)

(2011/C 55/52)

Language of the case: Spanish

Parties

Applicant: Trenzas y Cables de Acero PSC, SL (Santander, Spain) (represented by F. González Díaz and A. Tresandi Blanco, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel);

— in the alternative, annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, Article 2 of the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel) insofar as it entails an infringement of the principle of non-discrimination in not having extended to TYCSA PSC the additional period for payment of the fine, and fails to state reasons; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already raised in Case T-575/10 *Moreda-Riviere Trefilerías v Commission.*

Action brought on 14 December 2010 — Global Steel Wire v Commission

(Case T-578/10)

(2011/C 55/53)

Language of the case: Spanish

Parties

Applicant: Global Steel Wire, SA (Cerdanyola des Vallés, Spain) (represented by F. González Díaz and A. Tresandi Blanco, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel);

— in the alternative, annul, pursuant to Article 263 of the Treaty on the Functioning of the European Union, Article 2 of the decision of the European Commission of 30 September 2010 amending the decision of 30 June 2010 (C(2010) 4837 final in Case COMP/38.344 — prestressing steel) insofar as it entails an infringement of the principle of non-discrimination in not having extended to GSW the additional period for payment of the fine, and fails to state reasons; and

— order the European Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are those already raised in Case T-575/10 *Moreda-Riviere Trefilerías* v *Commission*.

Action brought on 21 December 2010 — macros consult GmbH v OHIM (makro)

(Case T-579/10)

(2011/C 55/54)

Language in which the application was lodged: German

Parties

Applicant: macros consult GmbH — Unternehmensberatung für Wirtschafts- und Finanztechnologie (Ottobrunn, Germany) (represented by: T. Raible, 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: MIP Metro Group Intellectual Property GmbH & Co. KG (Düsseldorf, Germany)

Form of order sought

The applicant claims that the General Court should

— Alter the decision of the Fourth Board of Appeal of OHIM given on 18 October 2010 in Case R 339/2009-4 so that the appeal brought by the applicant before the Board of Appeal is well-founded and therefore the application for a declaration of invalidity is granted;

— Order OHIM and MIP Metro Group to pay the costs incurred in the invalidity proceedings, appeal proceedings and the present proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: Figurative mark containing the word element 'makro' and registered in respect of goods and services in classes 1 to 42.

Proprietor of the Community trade mark: MIP Metro Group Intellectual Property GmbH & Co. KG.

Applicant for the declaration of invalidity: The applicant.

Trade mark right of applicant for the declaration: Application for a declaration of invalidity under Article 53(1)(c) and Article 53(2) of Regulation (EC) No 207/2009 [1] brought against the registered goods and services in classes 9, 35, 36 and 41.

Decision of the Cancellation Division: Rejection of the application.

Decision of the Board of Appeal: Rejection of the appeal.

Pleas in law: Breach of Article 53(1)(c) and Article 53(2) and Article 8(4) of Regulation (EC) No 207/2009, as the applicant used the designation 'macros Consult' as its name and business name/trade name already prior to the date of filing the application for the contested trade mark and therefore has a prior right under the first sentence of Paragraph 5(2) of the Law on trade marks (Markengesetz).

[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 23 December 2010 — Acron and Dorogobuzh v Council

(Case T-582/10)

(2011/C 55/55)

Language of the case: English

Parties

Applicants: Acron OAO (Veliky Novgorod, Russian Federation) and Dorogobuzh OAO (Verkhnedneprovsky Settlement, Russian Federation), (represented by: B. Evtimov, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul Council Implementing Regulation (EU) No 856/2010 of 27 September 2010 ([1]), insofar as it affects the applicants; and

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

Pleas in law and main arguments

By means of its application, the applicants seek, pursuant to Article 263 TFUE, the annulment of Council Regulation (EU) 856/2010, which terminated a partial interim review initiated pursuant to the request of the applicants for a change in the form of anti-dumping measure by including a related trader in their undertaking in force.

In support of their submissions, the applicants put forward the following pleas in law:

The applicants submit that the Union institutions used a legally flawed basis to reject their request and terminate the partial interim review without a change of measure.

More specifically, the applicants claim that the Union institutions breached Article 143(1)(a) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code (OJ 1993 L 253, p. 1) and made a manifest errors of assessment in finding that their related trader was related to another company.

Furthermore, the applicants submit that in the conduct of their investigation and findings in Council Regulation (EU) 856/2010 the institutions breached Article 5(4) TEU requiring the respect by the Union institutions of the fundamental EU law principle of proportionality, and of Article 41 of the Charter of Fundamental Rights embodying the principle of good administration.

([1]) Council Implementing Regulation (EU) No 856/2010 of 27 September 2010 terminating the partial interim review of Regulation (EC) No 661/2008 imposing a definitive anti-dumping duty on imports of ammonium nitrate originating in Russia (OJ 2010 L 254, p. 5)

Action brought on 27 December 2010 — Deutsche Telekom v OHIM — TeliaSonera Denmark (Shade of magenta)

(Case T-583/10)

(2011/C 55/56)

Language in which the application was lodged: English

Parties

Applicant: Deutsche Telekom AG (Bonn, Germany) (represented by: T. Dolde, V. von Bomhard and B. Goebel, lawyers)

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

Other party to the proceedings before the Board of Appeal: TeliaSonera Denmark A/S (Copenhagen, Denmark)

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 22 October 2010 in case R 463/2009-4;

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

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: The colour mark consisting in a shade of magenta for services in classes 38 and 42 — Community trade mark registration No 212787

Proprietor of the Community trade mark: The applicant

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

Grounds for the application for a declaration of invalidity: The party requesting the declaration of invalidity grounded its request on absolute grounds for refusal pursuant to Articles 4 and 7(3) of Council Regulation (EC) No 207/2009

Decision of the Cancellation Division: Closed the case following the withdrawal of the request for declaration of invalidity

Decision of the Board of Appeal: Dismissed the appeal as inadmissible

Pleas in law: Infringement of Article 59 of Council Regulation No 207/2009, as the Board of Appeal: (i) failed to properly assess the admissibility of the appeal, and (ii) violated Articles 85(3) and 83 of Council Regulation No 207/2009, by denying the legitimate interest to continue the proceedings.

Action brought on 27 December 2010 — Yilmaz v OHIM — Tequila Cuervo (TEQUILA MATADOR HECHO EN MEXICO)

(Case T-584/10)

(2011/C 55/57)

Language in which the application was lodged: English

Parties

Applicant: Mustafa Yilmaz (Stuttgart, Germany) (represented by: F. Kuschmirek, lawyer)

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

Other party to the proceedings before the Board of Appeal: Tequila Cuervo, SA de CV (Tlaquepaque, Mexico)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 13 October 2010 in case R 1162/2009-2; and

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

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'TEQUILA MATADOR HECHO EN MEXICO', for goods in class es 32 and 33 — Community trade mark application No 3975117

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

Mark or sign cited in opposition: German trade mark registration No 30205053.1 of the word mark 'MATADOR' for goods in class 32; International trade mark registration No 792051 of the word mark 'MATADOR' for goods in class 32

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

Decision of the Board of Appeal: Annulled the contested decision

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assessed that there was no likelihood of confusion, as the trade marks in question are confusingly similar with regard to the goods for which the applied for trade mark seeks protection.

Action brought on 29 December 2010 — Castiglioni v Commission

(Case T-591/10)

(2011/C 55/58)

Language of the case: Italian

Parties

Applicant: Castiglioni Srl (Busto Arsizio, Italy) (represented by: G. Turri, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested measures, which are better described in the present application, by declaring them null and void and, therefore, order the European Commission to compensate for damage in a particular form, which may include a declaration that any contract which may have been entered into between the Commission and the successful tenderers was invalid, null and void or ineffective;

— ***in the alternative***, annul the contested measures, which are better described in the present application, by declaring them null and void and, therefore, order the European Commission to compensate for the damage, including what is known as 'curricular damage', suffered by Castiglioni Srl in a commensurate amount to be quantified in the course of the proceedings, together with interest and monetary indexation to the date of actual payment;

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

Pleas in law and main arguments

The applicant relies on three grounds in support of its application:

— First ground, relating to infringement of Article 137(4) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1), infringement of the contract notice and subsequent clarifications, and failure to state reasons.

— It is submitted in this connection that the applicant has demonstrated that it possesses all the standard minimum capacity levels required in the contract notice and the fact that possession of the minimum requirements is demonstrated in part directly and partly in reliance on the capacities of other entities is totally irrelevant, given that reliance on the capacities of other entities is expressly contemplated in the rules governing the present case. The failure to evaluate the tender submitted by the applicant is therefore unlawful.

— Second ground, relating to infringement of Article 148(3) of Regulation (EC, Euratom) No 2342/2002, and failure to state reasons.

— It is submitted in this connection that, even if it had been minded to conclude that the documents submitted by the applicant for the purpose of demonstrating that it possessed Standard ST3 were lacking in clarity, the contracting authority should have applied Article 148(3) of Regulation No 2342/2002.

— Third ground, relating to the illegality of the contract notice.

It is submitted in this connection that if, which is disputed, it is held that justification for the contracting authority's position is to be found in the contact notice, the applicant challenges that notice, in reliance on the same complaints set out above in connection with the first ground.

Appeal brought on 21 December 2010 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 6 October 2010 in Case F-2/10, Marcuccio v Commission

(Case T-594/10 P)

(2011/C 55/59)

Language of the case: Italian

Parties

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

Other party to the proceedings: European Commission

Form of order sought by the appellant

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

— Declare that the action at first instance, in relation to which the order under appeal was made, was perfectly admissible.

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

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

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

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 6 October 2010. That order dismissed as partly manifestly inadmissible and partly unfounded an action directed against the Commission's refusal of his request for 100 % reimbursement of medical expenses relating to the illness from which he suffers.

In support of his appeal, the appellant submits that the findings concerning the object of the action and its admissibility were unlawful.

The appellant also alleges incorrect and unreasonable interpretation and application of Articles 90 and 91 of the Staff Regulations of Officials of the European Union and Article 94 of the Rules of Procedure of Civil Service Tribunal, a total failure to state reasons and failure to give a ruling on claim made by the appellant.

Appeal brought on 3 January 2011 by Gerhard Birkhoff against the judgment of the Civil Service Tribunal delivered on 27 October 2010 in Case F-60/09, Birkhoff v Commission

(Case T-10/11 P)

(2011/C 55/60)

Language of the case: Italian

Parties

Appellant: Gerhard Birkhoff (Weitnau, Germany) (represented by C. Inzillo, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Annul the contested decision

— Order the Commission to pay the costs of both sets of proceedings

Pleas in law and main arguments

This case seeks to have set aside the judgment of the Civil Service Tribunal in Case F-60/09 *Birkhoff* v *Commission* by which the Tribunal dismissed the action against the decision of the defendant refusing to extend the payment of the dependent child allowance which the appellant has received for his disabled daughter since 1978.

The appellant relies on seven pleas in law in support of his appeal:

— The first plea alleges breach of the rules of the Staff Regulations of Officials of the European Communities and of the principles of legal certainty and equal treatment.

— The second plea alleges an error of law in the finding that the applicant put forward a single plea in the application initiating proceedings (Article 2(5) of Annex VII to the Staff Regulations), thus limiting the claims which should, in fact, have included the misapplication of the legislation and related provisions in the area at issue.

— The third plea alleges an error of law, failure to state reasons and breach of Community law in that the Court of First Instance decided the dispute on the basis of analogy and in the complete absence of any certain legal criterion and/or rule of reference.

— The fourth plea alleges an error of law and omission and failure to state reasons in the assessment of the evidence adduced by the applicant in support of his arguments.

— The fifth plea alleges failure to respect the general and inviolable principles of equality between individuals and manifest lack of foundation for the application and interpretation of the relevant legislation and/or directives for the case at issue.

— The sixth plea alleges lack of competence, failure to state reasons and misuse of powers as regards the decision regarding deductible expenses wholly or partly attributable to the illness of the member of the applicant's family, made by the Tribunal on the basis of an opinion of the medical officer of the Joint Sickness Insurance Scheme rather than of the administration.

— The seventh plea alleges failure to state reasons regarding various key points of the judgment under appeal raised by the applicant and not considered by the Tribunal.

Order of the General Court of 10 January 2011 — Coedo Suárez v Council

(Case T-3/08) [1]

(2011/C 55/61)

Language of the case: French

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

[1] OJ C 64, 8.3.2008.

Order of the General Court of 16 December 2010 — FIFA v OHIM — Ferrero (WORLD CUP 2006 and Others)

(Joined Cases T-444/08 to T-448/08) [1]

(2011/C 55/62)

Language of the case: English

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

[1] OJ C 313, 6.12.2008.

Order of the General Court (First Chamber) of 13 December 2010 — Martinet v Commission

(Case T-163/09) [1]

(2011/C 55/63)

Language of the case: French

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

[1] OJ C 141, 20.6.2009.

Order of the General Court (First Chamber) of 15 December 2010 — De Lucia v OHIM — Galbani (De Lucia La natura pratica del gusto)

(Case T-2/10) [1]

(2011/C 55/64)

Language of the case: Italian

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

[1] OJ C 51, 27.2.2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 13 January 2011 — Nijs v Court of Auditors

(Case F-77/09) [1]

(Civil service — Officials — Disciplinary measures — Disciplinary procedure — Articles 22a and 22b of the Staff Regulations — Impartiality — Reasonable time)

(2011/C 55/65)

Language of the case: French

Parties

Applicant: Bart Nijs (Bridel, Luxembourg) (represented by: F. Rollinger, lawyer)

Defendant: Court of Auditors of the European Union (represented by: T. Kennedy and J.-M. Stenier, Agents)

Re:

Civil service — Application for annulment of the decision of the ad hoc committee of the European Court of Auditors of 15 January 2009 removing the applicant from his post with effect from 1 February 2009 without reduction in pension.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Nijs to bear his own costs and to pay those incurred by the Court of Auditors.*

[1] OJ C 282, 21.11.2009, p. 65.

Action brought on 14 July 2010 — Stefano Pedeferri and Others v European Commission

(Case F-57/10)

(2011/C 55/66)

Language of the case: Italian

Parties

Applicant(s): Stefano Pedeferri (Sangiano, Italy) and Others (represented by: G. Vistoli, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Declaration of the applicants' status of employee of the European Commission and their reinstatement on the staff of the Joint Research Centre in Ispra and compensation for the material and non-material damage suffered by each of them.

Form of order sought

— Decide and declare that the employment relationship of the applicants was established in clear breach of Law No 1369/60 of the Italian State and, consequently, declare that each of the employment relationships of the applicants was as an employee of the European Commission under the appropriate contractual, remunerative and social security conditions for the duties carried out, for each of the applicants, from the date of the commencement of those duties or such other date as may be decided in the course of the proceedings;

— Order the European Commission to reinstate the applicants on the staff of the Joint Research Centre in Ispra under the applicable rules and provisions as to contributions and social security;

— Order the European Commission to pay the applicants everything owed to them as employees of the Joint Research Centre, paying, in addition, the difference in social security and health insurance payments, in the amount required by the outcome of this case, commensurate with the regulatory and financial status of employees of the European Union performing the tasks of an auxiliary member of staff employed in security;

— Grant each of the applicants, by way of compensation for material and non-material damage a sum equal to 50 % of the amount owed to them on the grounds set out above, which should be no less than EUR 50 000.

Action brought on 29 September 2010 — Florentiny v Parliament

(Case F-90/10)

(2011/C 55/67)

Language of the case: French

Parties

Applicant: Jean-François Florentiny (Strassen, Luxembourg) (represented by: P. Nielsen Grade and G. Leblanc, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Annulment of the decision not to include the applicant in the list of officials promoted to grade AST6 in the 2009 promotion procedure.

Form of order sought

— Annul the decision of the appointing authority of 29 June 2010 rejecting the applicant's complaint;

— Annul the decision of the appointing authority of 24 November 2009, published on 2 December 2009, not to include the applicant in the list of officials promoted to grade AST6 in the 2009 promotion procedure;

— Indicate to the appointing authority the effects of the annulment of the contested decisions, in particular, classification in grade AST6, and that the promotion to grade AST6 must be backdated to the date on which it should have taken effect, namely 1 January 2009;

— Award the applicant EUR 2 000 as compensation for the non-material damage suffered;

— Order the European Parliament to pay the costs.

Action brought on 8 October 2010 — AM v Parliament

(Case F-100/10)

(2011/C 55/68)

Language of the case: French

Parties

Applicant: AM (Málaga, Spain) (represented by: L. Lévi and C. Bernard-Glanz, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

Application to annul the decision refusing to consider the cardio-vascular attack suffered by the applicant as an accident within the meaning of Article 73 of the Staff Regulations and Article 2 of the Joint Sickness Insurance Scheme.

Form of order sought

— Annul the decision of the appointing authority of 12 November 2009 refusing to consider the cardio-vascular attack suffered by the applicant as an accident within the meaning of Article 73 of the Staff Regulations and Article 2 of the rules concerning cover and, as far as necessary, annul the decision of the appointing authority rejecting the complaint;

— As a consequence, order a fresh consideration of the applicant's application, brought under Article 73 of the Staff Regulations, by a new medical committee;

— Order the defendant to pay damages, fixed, *ex aequo et bono*, at EUR 50 000 for the non-material damage suffered as a result of the contested decisions;

— Order the defendant to pay damages, fixed, provisionally, at EUR 25 000 for the material damage suffered as a result of the contested decisions;

— Order the defendant to pay interest for late payment on the capital due under Article 73 of the Staff Regulations at a rate of 12 % for a period which commenced not later than 15 March 2007 and which will terminate when the entire capital is paid;

— Order the European Parliament to pay the costs.

Action brought on 4 November 2010 — Bowles and Others v ECB

(Case F-114/10)

(2011/C 55/69)

Language of the case: French

Parties

Applicants: Carlos Bowles and Others (Frankfurt-am-Main, Germany) (represented by: L. Lévi and M. Vandenbussche, lawyers)

Defendant: European Central Bank

Subject-matter and description of the proceedings

Annulment of the applicants' salary slips for January 2010 and the following months in so far as they apply a salary increase of 2 % as a result of the 2010 salary adjustment procedure and compensation for the material loss suffered by the applicants.

Form of order sought

— Annul the applicants' salary slips for January 2010 and the following months in so far as they apply a salary increase of 2 %, in order to apply an increase of 2.1 %, calculated on the basis of an adjustment of 3.6 % at the Commission

— In so far as is necessary, annul the decisions rejecting the applications for reconsideration and the complaints brought by the applicants;

— Compensate the applicants for their material loss, consisting of the difference between the salary increase of 2 % improperly awarded from January 2010 and the 2.1 % increase to which they should have been entitled, that is to say, a increase of 0.1 % per month from January 2010 in salary and in all other amounts derived from it (including pension rights). Interest must be paid on those amounts from the respective dates on which they became due until they are actually paid, the interest to be calculated on the basis of a rate two points above that applied by the European Central Bank to main refinancing operations during the period concerned.

— Compensate for the loss of purchasing power, fixed, *ex aequo et bono*, at EUR 5 000 for each applicant;

— Compensate the applicants for their non-material loss, calculated, *ex aequo et bono*, at EUR 5 000 for each applicant;

— Order the European Central Bank to pay the costs.

Action brought on 10 November 2010 — Sandro Gozi v European Commission

(Case F-116/10)

(2011/C 55/70)

Language of the case: Italian

Parties

Applicant(s): Sandro Gozi (Sogliano al Rubicone, Italy) (represented by: L. De Luca and G. Passalacqua, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision rejecting the request for reimbursement of the legal costs incurred by the applicant in criminal proceedings before a national court.

Form of order sought

— Annul the measure taken by the Directorate General for Human Resources and Security — HR.D.2/MB/db Ares (2010) — Y96985

— Recognise and declare the right of the applicant to reimbursement of legal costs and, consequently, order the payment of the sum of EUR 24 480.

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