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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2011/C 362/01)

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

OJ C 355, 3.12.2011

Past publications

OJ C 347, 26.11.2011

OJ C 340, 19.11.2011

OJ C 331, 12.11.2011

OJ C 319, 29.10.2011

OJ C 311, 22.10.2011

OJ C 305, 15.10.2011

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Conseil d'État — Belgium) — Antoine Boxus, Willy Roua (C-128/09), Guido Durlet and Others (C-129/09), Paul Fastrez, Henriette Fastrez (C-130/09), Philippe Daras (C-131/09), Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACh) (C-134/09 and C-135/09), Bernard Page (C-134/09), Léon L'Hoir, Nadine Dartois (C-135/09) v Région wallonne

(Case C-128/09 to C-131/09, C-134/09 and C-135/09) ([1])

(Assessment of the effects of projects on the environment — Directive 85/337/EEC — Scope — Concept of 'specific act of national legislation' — Aarhus Convention — Access to justice in environmental matters — Extent of the right to a review procedure in respect of a legislative act)

(2011/C 362/02)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Antoine Boxus, Willy Roua (C-128/09), Guido Durlet and Others (C-129/09), Paul Fastrez, Henriette Fastrez (C-130/09), Philippe Daras (C-131/09), Association des riverains et habitants des communes proches de l'aéroport BSCA (Brussels South Charleroi Airport) (ARACh) (C-134/09 and C-135/09), Bernard Page (C-134/09), Léon L'Hoir, Nadine Dartois (C-135/09)

Defendant: Région wallonne

In the presence of: Société régionale wallonne du transport (SRWT) (C-128/09 and C-129/09), Infrabel SA (C-130/09 and C-131/09), Société wallonne des aéroports (SOWEAR) (C-135/09)

Re:

Reference for a preliminary ruling — Conseil d'État (Belgium) — Interpretation of Articles 1, 5, 6, 7, 8 and 10a of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) — Interpretation of Articles 6 and 9 of the Aarhus Convention on access to information, public participation in decision-making and access to justice in environmental matters, concluded on 25 June 1998 and approved, on behalf of the European Community, by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1) — Recognition, as specific national legislative acts, of certain consents 'ratified' by decree in respect of which there are overriding reasons in the general interest? — Absence of complete right of action against a decision to authorise projects capable of having significant effects on the environment — Whether the existence of such a right is optional or obligatory — Infrastructure works relating to the extension of the Liège-Bierset Airport runway

Operative part of the judgment

1. *Article 1(5) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that only projects the details of which have been adopted by a specific legislative act, in such a way that the objectives of that directive have been achieved by the legislative process, are excluded from the directive's scope. It is for the national court to verify that those two conditions have been satisfied, taking account both of the content of the legislative act adopted and of the entire legislative process which led to its adoption, in particular the preparatory documents and parliamentary debates. In that regard, a legislative act which does no more than simply 'ratify' a pre-existing administrative act, by merely referring to overriding reasons in the general interest without a substantive legislative process enabling those conditions to be fulfilled having first been commenced, cannot be regarded as a specific legislative act for the purposes of that provision and is therefore not sufficient to exclude a project from the scope of Directive 85/337, as amended by Directive 2003/35;*

2. *Article 9(2) of the Convention on access to information, public participation in decision making and access to justice in environmental matters, concluded on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005, and Article 10a of Directive 85/337, as amended by Directive 2003/35, must be interpreted as meaning that:*

   — *when a project falling within the scope of those provisions is adopted by a legislative act, the question whether that legislative act satisfies the conditions laid down in Article 1(5) of that directive must be capable of being submitted, under the national procedural rules, to a court of law or an independent and impartial body established by law;*

   — *if no review procedure of the nature and scope set out above were available in respect of such an act, any national court before which an action falling within its jurisdiction is brought would have the task of carrying out the review described in the previous indent and, as the case may be, drawing the necessary conclusions by disapplying that legislative act.*

([1]) OJ C 153, 4.7.2009.

Judgment of the Court (First Chamber) of 20 October 2011 — European Commission v Federal Republic of Germany

(Case C-284/09) ([1])

(Failure of a Member State to fulfil obligations — Free movement of capital — Article 56 EC and Article 40 of the Agreement on the European Economic Area — Taxation of dividends — Dividends distributed to companies established in national territory and to companies established in another Member State or a State of the European Economic Area — Different treatment)

(2011/C 362/03)

Language of the case: German

Parties

Applicant: European Commission (represented by: R. Lyal and B.-R. Killmann, acting as Agents)

Defendant: Federal Republic of Germany (represented by: M. Lumma and C. Blaschke, acting as Agents, and Professor A. Kube)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Article 56 EC and Article 40 of the EEA Agreement — National legislation fully exempting from withholding tax the dividends paid by subsidiaries to parent companies established in national territory, whereas, with regard to parent companies established in another Member State or State of the European Economic Area, that legislation makes that total exemption subject to the condition that the minimum threshold for the parent company's shareholdings in the share capital of the subsidiary set out in Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6) is reached

Operative part of the judgment

The Court:

1. *Declares that, by taxing dividends distributed to companies established in other Member States, where the threshold for a parent company's holding in the capital of its subsidiary laid down in Article 3(1)(a) of Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, as amended by Council Directive 2003/123/EC of 22 December 2003, is not reached, more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 56(1) EC;*

2. *Declares that, by taxing dividends distributed to companies established in Iceland and Norway more heavily in economic terms than dividends distributed to companies established in its territory, the Federal Republic of Germany has failed to fulfil its obligations under Article 40 of the Agreement on the European Economic Area of 2 May 1992;*

3. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 256, 24.10.2009.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Tribunale ordinario di Bari — Italy) — Interedil Srl, in liquidation v Fallimento Interedil Srl, Intesa Gestione Crediti SpA

(Case C-396/09) ([1])

(Reference for a preliminary ruling — Whether a lower court has the power to refer a question to the Court for a preliminary ruling — Regulation (EC) No 1346/2000 — Insolvency proceedings — International jurisdiction — The centre of a debtor's main interests — Transfer of a registered office to another Member State — Concept of establishment)

(2011/C 362/04)

Language of the case: Italian

Referring court

Tribunale ordinario di Bari

Parties to the main proceedings

Applicant: Interedil Srl, in liquidation

Defendant: Fallimento Interedil Srl, Intesa Gestione Crediti SpA

Re:

Reference for a preliminary ruling — Tribunale ordinario di Bari — Interpretation of Article 3 of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (OJ 2000 L 160, p. 1) — The centre of a debtor's main interests — Presumption as to the place of a company's registered office — Establishment in another Member State — Community or national concepts

Operative part of the judgment

1. *European Union law precludes a national court from being bound by a national procedural rule under which that court is bound by the rulings of a higher national court, where it is apparent that the rulings of the higher court are at variance with European Union law, as interpreted by the Court of Justice.*

2. *The term 'centre of a debtor's main interests' in Article 3(1) of Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings must be interpreted by reference to European Union law.*

3. *For the purposes of determining a debtor company's main centre of interests, the second sentence of Article 3(1) of Regulation No 1346/2000 must be interpreted as follows:*

   — *a debtor company's main centre of interests must be determined by attaching greater importance to the place of the company's central administration, as may be established by objective factors which are ascertainable by third parties. Where the bodies responsible for the management and supervision of a company are in the same place as its registered office and the management decisions of the company are taken, in a manner that is ascertainable by third parties, in that place, the presumption in that provision cannot be rebutted. Where a company's central administration is not in the same place as its registered office, the presence of company assets and the existence of contracts for the financial exploitation of those assets in a Member State other than that in which the registered office is situated cannot be regarded as sufficient factors to rebut the presumption unless a comprehensive assessment of all the relevant factors makes it possible to establish, in a manner that is ascertainable by third parties, that the company's actual centre of management and supervision and of the management of its interests is located in that other Member State;*

   — *where a debtor company's registered office is transferred before a request to open insolvency proceedings is lodged, the company's centre of main activities is presumed to be the place of its new registered office.*

4. *The term 'establishment' within the meaning of Article 3(2) of Regulation No 1346/2000 must be interpreted as requiring the presence of a structure consisting of a minimum level of organisation and a degree of stability necessary for the purpose of pursuing an economic activity. The presence alone of goods in isolation or bank accounts does not, in principle, meet that definition.*

([1]) OJ C 312, 19.12.2009.

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Realchemie Nederland BV v Bayer CropScience AG

(Case C-406/09) ([1])

(Regulation (EC) No 44/2001 — Jurisdiction and recognition and enforcement of judgments — Definition of 'civil and commercial matters' — Recognition and enforcement of an order imposing a fine — Directive 2004/48/EC — Intellectual property rights — Infringement of those rights — Measures, procedures and remedies — Sentence — Exequatur procedure — Related legal costs)

(2011/C 362/05)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Realchemie Nederland BV

Defendant: Bayer CropScience AG

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1) and of Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45) — Concept of civil and commercial matters — Breach of the injunction issued by a German court against importing certain pesticides into Germany or marketing them there — Fine — Enforcement of the order imposing that fine — Enforcement proceedings relating to costs orders made abroad in respect of penalties or fines for breach of an injunction against infringement of an intellectual property right

Operative part of the judgment

1. *The concept of 'civil and commercial matters' in Article 1 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters must be interpreted as meaning that that regulation applies to the recognition and enforcement of a decision of a court or tribunal that contains an order to pay a fine in order to ensure compliance with a judgment given in a civil and commercial matter;*

2. *The costs relating to an exequatur procedure brought in a Member State, in the course of which the recognition and enforcement is sought of a judgment given in another Member State in proceedings seeking to enforce an intellectual property right, fall within Article 14 of Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights.*

([1]) OJ C 312, 19.12.2009.

Judgment of the Court (Sixth Chamber) of 20 October 2011 — European Commission v French Republic

(Case C-549/09) ([1])

(Failure to fulfil obligations — State aid — Aid granted to fish farmers and fishermen — Decision declaring that aid incompatible with the common market — Obligation to recover immediately the aid declared unlawful and incompatible and to inform the Commission — Non-compliance — Absolute impossibility of compliance)

(2011/C 362/06)

Language of the case: French

Parties

Applicant: European Commission (represented by: É. Gippini Fournier and K. Walkerová, acting as Agent(s))

Defendant: French Republic (represented by: G. de Bergues and J. Gstalter, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to take the measures necessary to comply with Commission Decision 2005/239/EC of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen (OJ 2005, L 74, p. 49) — Obligation to recover immediately the aid declared unlawful and incompatible and to inform the Commission.

Operative part of the judgment

The Court:

1. *Declares that, by failing to comply, within the prescribed time-limits, with Commission Decision 2005/239/EC of 14 July 2004 concerning certain aid measures applied by France to assist fish farmers and fishermen, by recovering from the recipients of the aid declared unlawful and incompatible with the common market by Articles 2 and 3 of that decision, the French Republic has failed to fulfil its obligations under the fourth paragraph of Article 288 TFEU and Article 4 of that decision.*

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

([1]) OJ C 80, 27.3.2010.

Judgment of the Court (Grand Chamber) of 18 October 2011 (reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Oliver Brüstle v Greenpeace e.V.

(Case C-34/10) ([1])

(Directive 98/44/EC — Article 6(2)(c) — Legal protection of biotechnological inventions — Extraction of precursor cells from human embryonic stem cells — Patentability — Exclusion of 'uses of human embryos for industrial or commercial purposes' — Concepts of 'human embryo' and 'use for industrial or commercial purposes')

(2011/C 362/07)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Oliver Brüstle

Defendant: Greenpeace e.V.

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 6(1) and (2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions (OJ 1998 L 213, p. 13) — Extraction, for the purposes of scientific research, of precursor cells from human embryonic stem cells taken from a blastocyst, which is no longer capable of developing into a human being — Exclusion from patentability of that process as 'use of human embryos for industrial or commercial purposes'? — Concept of 'human embryos' and 'uses for industrial or commercial purposes'

Operative part of the judgment

1. *Article 6(2)(c) of Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions must be interpreted as meaning that:*

   — *any human ovum after fertilisation, any non-fertilised human ovum into which the cell nucleus from a mature human cell has been transplanted, and any non-fertilised human ovum whose division and further development have been stimulated by parthenogenesis constitute a 'human embryo';*

   — *it is for the referring court to ascertain, in the light of scientific developments, whether a stem cell obtained from a human embryo at the blastocyst stage constitutes a 'human embryo' within the meaning of Article 6(2)(c) of Directive 98/44.*

2. *The exclusion from patentability concerning the use of human embryos for industrial or commercial purposes set out in Article 6(2)(c) of Directive 98/44 also covers the use of human embryos for purposes of scientific research, only use for therapeutic or diagnostic purposes which is applied to the human embryo and is useful to it being patentable.*

3. *Article 6(2)(c) of Directive 98/44 excludes an invention from patentability where the technical teaching which is the subject-matter of the patent application requires the prior destruction of human embryos or their use as base material, whatever the stage at which that takes place and even if the description of the technical teaching claimed does not refer to the use of human embryos.*

([1]) OJ C 100, 17.4.2010.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Vestre Landsret — Denmark) — Danfoss A/S, Sauer-Danfoss ApS v Skatteministeriet

(Case C-94/10) ([1])

(Indirect taxes — Excise duties on mineral oils — Incompatibility with European Union law — Non-repayment of excise duty to purchasers of goods to whom the excise duty has been passed on)

(2011/C 362/08)

Language of the case: Danish

Referring court

Vestre Landsret

Parties to the main proceedings

Applicants: Danfoss A/S, Sauer-Danfoss ApS

Defendant: Skatteministeriet

Re:

Reference for a preliminary ruling — Vestre Landsret — Interpretation of European Union law on recovery of sums unduly paid and the conditions for compensation for losses caused to individuals — Excise duties levied contrary to the system of harmonised excise duties put in place by Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1) and Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duty on mineral oils (OJ 1992 L 316, p. 12) — Unlawful excise duty paid to the State by oil companies which sold oils subject to excise duty whilst incorporating the excise duty into the price of the goods — Failure by the State to repay the excise duty to purchasers of the oils on the ground that they had not paid it to the State — Refusal to compensate for the losses caused to the purchasers of the oils by the unlawful excise duty due to the lack of immediate loss and direct causal link between the infringement of the State's obligation and the loss suffered

Operative part of the judgment

The rules of European Union law must be construed as meaning that:

1. *a Member State may oppose a claim for reimbursement of a duty unduly paid, brought by the purchaser to whom that duty has been passed on, on the ground that it is not the purchaser who has paid the duty to the tax authorities, provided that the purchaser is able, on the basis of national law, to bring a civil action against the taxable person for recovery of the sum unduly paid and provided that the reimbursement, by that taxable person, of the duty unduly paid is not virtually impossible or excessively difficult;*

2. *a Member State may reject a claim for damages brought by a purchaser to whom a duty unduly paid has been passed on by the taxable person, on the ground that there is no direct causal link between the levying of that duty and the damage suffered, provided that the purchaser is able, on the basis of national law, to bring that claim against the taxable person and provided that the compensation, by that taxable person, of the damage suffered by the purchaser is not virtually impossible or excessively difficult.*

([1]) OJ C 100, 17.4.2010.

Judgment of the Court (Fourth Chamber) of 20 October 2011 (reference for a preliminary ruling from the Oberster Gerichtshof — Austria) — Waltraud Brachner v Pensionsversicherungsanstalt

(Case C-123/10) ([1])

(Social policy — Equal treatment for men and women in matters of social security — Directive 79/7/EEC — Articles 3(1) and 4(1) — National scheme for annual pension adjustments — Exceptional increase in pensions for the year 2008 — Exclusion from that increase of pensions of an amount lower than the compensatory supplement standard rate — Exceptional increase in that standard rate for the year 2008 — Exclusion from entitlement to the compensatory supplement of pensioners whose income, including that of the spouse forming part of their household, exceeds that standard rate — Scope of application of the directive — Indirect discrimination against women — Justification — No justification)

(2011/C 362/09)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Waltraud Brachner

Defendant: Pensionsversicherungsanstalt

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 4 of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security (OJ 1979 L 6, p. 24) — Increase in pensions — Indirect discrimination against women — National legislation which, for a group of persons receiving a pension lower than the minimum subsistence income and which is made up primarily of women, provides for a smaller pension increase than for those receiving higher pensions

Operative part of the judgment

1. *Article 3(1) of Council Directive 79/7/EEC of 19 December 1978 on the progressive implementation of the principle of equal treatment for men and women in matters of social security must be interpreted as meaning that an annual pension adjustment scheme such as that at issue in the main proceedings comes within the scope of that directive and is therefore subject to the prohibition of discrimination laid down in Article 4(1) of that directive.*

2. *Article 4(1) of Directive 79/7 must be interpreted as meaning that, taking into account the statistical data produced before the referring court and in the absence of evidence to the contrary, that court would be justified in taking the view that that provision precludes a national arrangement which leads to the exclusion, from an exceptional pension increase, of a significantly higher percentage of female pensioners than male pensioners.*

3. *Article 4(1) of Directive 79/7 must be interpreted as meaning that if, in the examination which the referring court must carry out in order to reply to the second question, it should conclude that a significantly higher percentage of female pensioners than male pensioners may in fact have suffered a disadvantage because of the exclusion of minimum pensions from the exceptional increase provided for by the adjustment scheme at issue in the main proceedings, that disadvantage cannot be justified by the fact that women who have worked become entitled to a pension at an earlier age or that they receive their pension over a longer period, or because the compensatory supplement standard rate was also subject to an exceptional increase in respect of the same year 2008.*

([1]) OJ C 148, 5.6.2010.

Judgment of the Court (First Chamber) of 20 October 2011 (reference for a preliminary ruling from the Hof van Cassatie (Belgium)) — Greenstar-Kanzi Europe NV v Jean Hustin, Jo Goossens

(Case C-140/10) ([1])

(Regulation (EC) No 2100/94, as amended by Regulation (EC) No 873/2004 — Interpretation of Articles 11(1), 13(1) to (3), 16, 27, 94 and 104 — Principle of exhaustion of Community plant variety rights — Licensing contract — Action for infringement against a third party — Infringement of the licensing contract by the person enjoying the right of exploitation in his contractual relationship with the third party)

(2011/C 362/10)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Greenstar-Kanzi Europe NV

Defendants: Jean Hustin, Jo Goossens

Re:

Reference for a preliminary ruling — Hof van Cassatie van België — Interpretation of Articles 11(1), 13(1)(2) and (3), 16, 27, 94 and 104 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1) as amended by Regulation (EC) No 873/2004 (OJ 2004 L 162, p. 38) — Civil law actions — Proceedings brought by the holder of a Community plant variety right or a licence holder against an individual who has, in relation to

harvested material of the protected variety acquired from an individual holding an exploitation right, taken certain measures in contravention of the limits prescribed in the licence agreement concluded with the holder of those rights.

Operative part of the judgment

1. *In circumstances such as those at issue in the main proceedings, Article 94 of Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights, as amended by Council Regulation (EC) No 873/2004 of 29 April 2004, read in conjunction with Articles 11(1), 13(1) to (3), 16, 27 and 104 thereof, must be interpreted as meaning that the holder or the person enjoying the right of exploitation may bring an action for infringement against a third party which has obtained material through another person enjoying the right of exploitation who has contravened the conditions or limitations set out in the licensing contract that that other person concluded at an earlier stage with the holder to the extent that the conditions or limitations in question relate directly to the essential features of the Community plant variety right concerned. It is for the referring court to make that assessment.*

2. *It is of no significance for the assessment of the infringement that the third party which effected the acts on the material sold or disposed of was aware or was deemed to be aware of the conditions or limitations imposed in the licensing contract.*

([1]) OJ C 161, 19.6.2010.

Judgment of the Court (Second Chamber) of 20 October 2011 (reference for a preliminary ruling from the Sozialgericht Nürnberg (Germany)) — Juan Perez Garcia, Jose Arias Neira, Fernando Barrera Castro, Dolores Verdún Espinosa successor in title to José Bernal Fernández v Familienkasse Nürnberg

(Case C-225/10) ([1])

(Social security — Regulation (EEC) No 1408/71 — Articles 77 and 78 — Pensioners entitled under the legislation of several Member States — Handicapped children — Family benefits for dependent children — Right to benefits in the former Member State of employment — Existence of a right to benefits in the Member State of residence — Failure to make a request — Choice of payment of an invalidity benefit incompatible with benefits for dependent children — Concept of 'benefit for dependent children' — Maintenance of rights acquired in the former Member State of employment)

(2011/C 362/11)

Language of the case: German

Referring court

Sozialgericht Nürnberg

Parties to the main proceedings

Applicants: Juan Perez Garcia, Jose Arias Neira, Fernando Barrera Castro, Dolores Verdún Espinosa successor in title to José Bernal Fernández

Defendant: Familienkasse Nürnberg

Re:

Reference for a preliminary ruling — Sozialgericht Nürnberg — Interpretation of Articles 77 and 78 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1997 L 149, p. 2) — Benefits for dependant handicapped children of pensioners which are due under the legislation of several Member States and benefits for orphans which are subject to the legislation of several Member States — Right to a supplement paid by the State of employment where allowances for children in the State of residence are higher but not compatible with a non-contributory pension for invalidity which the party concerned has opted for

Operative part of the judgment

1. *Articles 77(2)(b)(i) and 78(2)(b)(i) 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 members of their families moving within the Community, as amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, as amended by Regulation (EC) No 1992/2006 of the European Parliament and of the Council of 18 December 2006 must be interpreted as meaning that recipients of old age and/or invalidity pensions, or the orphan of a deceased worker, to whom the legislation of several Member States applied, but whose pension or orphan's rights are based on the legislation of the former Member State of employment alone, are entitled to claim from the competent authorities of that State the full amount of the family allowances provided under that legislation for handicapped children, even though they have not, in the Member State of residence, applied for comparable, higher, allowances under the legislation of that latter State, because they opted to be granted another benefit for handicapped persons which is incompatible with those, since the right to family allowances in the former Member State of employment was acquired by reason of the legislation of that State alone.*

2. *The answer to the third question is that the answer to it is the same as that to the first two questions where, under the legislation of the Member State of residence, the interested persons are unable to opt for payment of family allowances in that State.*

([1]) OJ C 221, 14.8.2010.

Judgment of the Court (Fourth Chamber) of 20 October 2011 — PepsiCo, Inc., v Grupo Promer Mon Graphic SA, Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-281/10 P) ([1])

(Appeal — Regulation (EC) No 6/2002 — Articles 5, 6, 10 and 25(1)(d) — Community design — Registered Community design representing a circular promotional item — Prior Community design — Different overall impression — Degree of freedom of the designer — Informed user — Scope of review by the Courts — Distortion of the facts)

(2011/C 362/12)

Language of the case: English

Parties

Appellant: PepsiCo, Inc., (represented by: E. Armijo Chávarri, abogado, and V. von Bomhard, Rechtsanwältin)

Other parties to the proceedings: Grupo Promer Mon Graphic SA (represented by: R. Almaraz Palmero, abogada), Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Fifth Chamber) of 18 March 2010 in Case T-9/07 *Grupo Promer Mon Graphic* v *OHIM — Pepsico*, by which that Court upheld an action brought by the proprietor of Community design No 53186 1 against decision R 1001/2005-3 of the Third Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 27 October 2006, annulling the decision of the Invalidity Division which declared design No 74463 1 ('promotional item[s] for games') invalid

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders PepsiCo Inc. to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Judgment of the Court (Third Chamber) of 20 October 2011 — Freixenet SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Joined Cases C-344/10 P and C-345/10 P) ([1])

(Appeal — Applications for registration of Community trade marks representing a frosted white bottle and a frosted black matt bottle — Refusal to register — Lack of distinctive character)

(2011/C 362/13)

Language of the case: French

Parties

Appellant: Freixenet SA (represented by: F. de Visscher, E. Cornu and D. Moreau, avocats)

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

Re:

Appeal against the judgment of the General Court (Third Chamber) of 27 April 2010 in Case T-109/08 *Freixenet* v *OHIM*, by which that court dismissed the appellant's appeal against the decision of the First Board of Appeal of OHIM of 30 October 2007 (Case R 97/2001-1), concerning an application for registration of a sign representing a frosted white matt bottle as a Community trade mark — Infringement of Articles 7(1)(b), 73 and 38(3) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) (now Articles 7(1)(b), 75 and 37(3) of Council Regulation (EC) No 207/2009 of 26 February on the Community trade mark (OJ 2009 L 78, p. 1)) — Infringement of the rights of the defence and the right to a fair hearing — Refusal to register a trade mark — Absence of distinctive character

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the General Court of the European Union of 27 April 2010 in Case T-109/08 Freixenet v OHIM (Frosted white bottle), and in Case T-110/08 Freixenet v OHIM (Frosted black matt bottle);*

2. *Annuls the decisions of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 October 2007 (case R 97/2001-1) and of 20 November 2007 (Case R 104/2001-1);*

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

([1]) OJ C 274, 9.10.2010.

Judgment of the Court (Fourth Chamber) of 20 October 2011 (reference for a preliminary ruling from the Court of Appeal in Northern Ireland (United Kingdom)) — Department of the Environment for Northern Ireland v Seaport (NI) Ltd, Magherafelt District Council, F P McCann (Developments) Ltd, Younger Homes Ltd, Heron Brothers Ltd, G Small Contracts, Creagh Concrete Products Ltd

(Case C-474/10) [1]

(Reference for a preliminary ruling — Directive 2001/42/EC — Article 6 — Designation, for consultation purposes, of an authority likely to be concerned by the environmental effects of implementing plans and programmes — Possibility of authority to be consulted conceiving plans or programmes — Requirement to designate a separate authority — Arrangements for the information and consultation of the authorities and the public)

(2011/C 362/14)

Language of the case: English

Referring court

Court of Appeal in Northern Ireland

Parties to the main proceedings

Appellant: Department of the Environment for Northern Ireland

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

Re:

Reference for a preliminary ruling — Court of Appeal in Northern Ireland — Interpretation of Articles 6(2), 6(3) and 6(4) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (OJ 2001 L 197, p. 30) — Designation, as authority to be consulted, of an authority likely to be concerned by the environmental effects of the implementation of plans and programmes — Rules relating to informing and consulting authorities and the public.

Operative part of the judgment

1. *In circumstances such as those in the main proceedings, Article 6(3) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment does not require that another authority to be consulted as provided for in that provision be created or designated, provided that, within the authority usually responsible for undertaking consultation on environmental matters and designated as such, a functional separation is organised so that an administrative entity internal to it has real autonomy, meaning, in particular, that it is provided with administrative and human resources of its own and is thus in a position to fulfil the tasks entrusted to authorities to be consulted as provided for in Article 6(3) and, in particular, to give an objective opinion on the plan or programme envisaged by the authority to which it is attached.*

2. *Article 6(2) of Directive 2001/42 must be interpreted as not requiring that the national legislation transposing the directive lay down precisely the periods within which the authorities designated and the public affected or likely to be affected for the purposes of Article 6(3) and (4) should be able to express their opinions on a particular draft plan or programme and on the environmental report upon it. Consequently, Article 6(2) does not preclude such periods from being laid down on a case-by-case basis by the authority which prepares the plan or programme. However, in that situation, Article 6(2) requires that, for the purposes of consultation of those authorities and the public on a given draft plan or programme, the period actually laid down be sufficient to allow them an effective opportunity to express their opinions in good time on that draft plan or programme and on the environmental report upon it.*

[1] OJ C 13, 15.1.2011.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 September 2011 — Verwertungsgesellschaft Wort (VG Wort) v Kyocera Mita Deutschland GmbH and Others

(Case C-457/11)

(2011/C 362/15)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verwertungsgesellschaft Wort (VG Wort)

Defendants: Kyocera Mita Deutschland GmbH, Epson Deutschland GmbH, Xerox GmbH

Questions referred

The following questions concerning the interpretation of Directive 2001/29/EC [1] of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society are hereby referred to the Court of Justice of the European Union for a preliminary ruling:

1. In interpreting national law, is account to be taken of the directive in respect of events which occurred after the directive entered into force on 22 June 2001, but before it became applicable on 22 December 2002?

2. Do reproductions effected by means of printers constitute reproductions effected by the use of any kind of photographic technique or by some other process having similar effects within the meaning of Article 5(2)(a) of the directive?

3. If Question 2 is answered affirmatively: can the requirements laid down in the directive relating to fair compensation for exceptions or limitations to the right of reproduction under Article 5(2) and (3) of the directive, having regard to the fundamental right to equal treatment under Article 20 of the EU Charter of Fundamental rights, be fulfilled also where the appropriate reward must be paid not by the manufacturers, importers and traders of the printers but by the manufacturers, importers and traders of another device or several other devices of a chain of devices capable of making the relevant reproductions?

4. Does the possibility of applying technological measures under Article 6 of the directive abrogate the condition relating to fair compensation within the meaning of Article 5(2)(b) thereof?

5. Is the condition relating to fair compensation (Article 5(2)(a) and (b) of the directive) and the possibility thereof (see recital 36 in the preamble to the directive) abrogated where the rightholders have expressly or implicitly authorised reproduction of their works?

([1]) OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 September 2011 — Verwertungsgesellschaft Wort (VG Wort) v Canon Deutschland GmbH

(Case C-458/11)

(2011/C 362/16)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Verwertungsgesellschaft Wort (VG Wort)

Defendants: Canon Deutschland GmbH

Questions referred

The following questions concerning the interpretation of Directive 2001/29/EC ([1]) of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society are hereby referred to the Court of Justice of the European Union for a preliminary ruling:

1. In interpreting national law, is account to be taken of the directive in respect of events which occurred after the directive entered into force on 22 June 2001, but before it became applicable on 22 December 2002?

2. Do reproductions effected by means of printers constitute reproductions effected by the use of any kind of photographic technique or by some other process having similar effects within the meaning of Article 5(2)(a) of the directive?

3. If Question 2 is answered affirmatively: can the requirements laid down in the directive relating to fair compensation for exceptions or limitations to the right of reproduction under Article 5(2) and (3) of the directive, having regard to the fundamental right to equal treatment under Article 20 of the EU Charter of Fundamental rights, be fulfilled also where the appropriate reward must be paid not by the manufacturers, importers and traders of the printers but by the manufacturers, importers and traders of another device or several other devices of a chain of devices capable of making the relevant reproductions?

4. Does the possibility of applying technological measures under Article 6 of the directive abrogate the condition relating to fair compensation within the meaning of Article 5(2)(b) thereof?

5. Is the condition relating to fair compensation (Article 5(2)(a) and (b) of the directive) and the possibility thereof (see recital 36 in the preamble to the directive) abrogated where the rightholders have expressly or implicitly authorised reproduction of their works?

([1]) OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 September 2011 — Fujitsu Technology Solutions GmbH v Verwertungsgesellschaft Wort (VG Wort)

(Case C-459/11)

(2011/C 362/17)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Fujitsu Technology Solutions GmbH

Defendant: Verwertungsgesellschaft Wort (VG Wort)

Questions referred

The following questions concerning the interpretation of Directive 2001/29/EC [1] of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society are hereby referred to the Court of Justice of the European Union for a preliminary ruling:

1. In interpreting national law, is account to be taken of the directive in respect of events which occurred after the directive entered into force on 22 June 2001, but before it became applicable on 22 December 2002?

2. Do reproductions effected by means of PCs constitute reproductions effected by the use of any kind of photographic technique or by some other process having similar effects within the meaning of Article 5(2)(a) of the directive?

3. If Question 2 is answered affirmatively: can the requirements laid down in the directive relating to fair compensation for exceptions or limitations to the right of reproduction under Article 5(2) and (3) of the directive, having regard to the fundamental right to equal treatment under Article 20 of the EU Charter of Fundamental rights, be fulfilled also where the appropriate reward must be paid not by the manufacturers, importers and traders of the PCs but by the manufacturers, importers and traders of another device or several other devices of a chain of devices capable of making the relevant reproductions?

4. Does the possibility of applying technological measures under Article 6 of the directive abrogate the condition relating to fair compensation within the meaning of Article 5(2)(b) thereof?

5. Is the condition relating to fair compensation (Article 5(2)(a) and (b) of the directive) and the possibility thereof (see recital 36 in the preamble to the directive) abrogated where the rightholders have expressly or implicitly authorised reproduction of their works?

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[1] OJ 2011 L 167, p. 10.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 5 September 2011 — Hewlett-Packard GmbH v Verwertungsgesellschaft Wort (VG Wort)

(Case C-460/11)

(2011/C 362/18)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Hewlett-Packard GmbH

Defendant: Verwertungsgesellschaft Wort (VG Wort)

Questions referred

The following questions concerning the interpretation of Directive 2001/29/EC [1] of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society are hereby referred to the Court of Justice of the European Union for a preliminary ruling:

1. In interpreting national law, is account to be taken of the directive in respect of events which occurred after the directive entered into force on 22 June 2001, but before it became applicable on 22 December 2002?

2. Do reproductions effected by means of printers constitute reproductions effected by the use of any kind of photographic technique or by some other process having similar effects within the meaning of Article 5(2)(a) of the directive?

3. If Question 2 is answered affirmatively: can the requirements laid down in the directive relating to fair compensation for exceptions or limitations to the right of reproduction under Article 5(2) and (3) of the directive, having regard to the fundamental right to equal treatment under Article 20 of the EU Charter of Fundamental rights, be fulfilled also where the appropriate reward must be paid not by the manufacturers, importers and traders of the printers but by the manufacturers, importers and traders of another device or several other devices of a chain of devices capable of making the relevant reproductions?

(1) OJ 2001 L 167, p. 10.

Reference for a preliminary ruling from the Tribunal Central Administrativo Sul (Portugal) lodged on 26 September 2011 — Portugal Telecom SGPS, SA v Fazenda Pública

(Case C-496/11)

(2011/C 362/19)

Language of the case: Portuguese

Referring court

Tribunal Central Administrativo Sul

Parties to the main proceedings

Appellant: Portugal Telecom SGPS, SA

Respondent: Fazenda Pública

Intervening party: Ministério Público

Questions referred

(a) Is Article 17(2) of Sixth Council Directive 77/388/EEC (1) of 17 May 1977 concerning VAT to be interpreted as precluding the Portuguese tax authorities from requiring the appellant, a holding company, to use the pro rata deduction method for all the VAT incurred in its inputs, on the basis of the fact that the main corporate purpose of that company is the management of shareholdings of other companies, even when such inputs (acquired services) have a direct, immediate and unequivocal relationship with taxable transactions — supplies of services — which are carried out downstream in the context of the complementary activity of supplying legally permitted, technical management services?

(b) May a body that has the status of a holding company and is subject to VAT on the acquisition of goods and services that are thereupon wholly transmitted to companies in which it has a holding, with payment of the VAT, when that institution combines the main activity it carries out (management of shareholdings) with an accessory activity (supply of technical administration and management services), deduct all the tax incurred in respect of those acquisitions by applying the method of deduction based on actual use set out in Article 17(2) of the Sixth Directive?

(1) 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).

Appeal brought on 29 September 2011 by Kone Oyj, Kone GmbH, Kone BV against the judgment of the General Court (Eighth Chamber) delivered on 13 July 2011 in Case T-151/07: Kone Oyj, Kone GmbH, Kone BV v European Commission

(Case C-510/11 P)

(2011/C 362/20)

Language of the case: English

Parties

Appellants: Kone Oyj, Kone GmbH, Kone BV (represented by: T. Vinje, Solicitor, D. Paemen, Advocaat, A. Tomtsis, Dikigoros, A. Morfey, Solicitor)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside in whole the Judgment of the General Court;

— annul Article 2(2) of the Decision in so far as it imposes a fine on Kone Oyj and Kone GmbH, and impose either no fine or a fine at a lower amount than determined in the 21 February 2007 Decision of the Commission relating to a proceeding under Article 101 TFEU (Case COMP/E-1/38.823 — PO/Elevators and Escalators) (the 'Decision');

— annul Article 2(4) of the Commission Decision in so far as it imposes a fine on Kone Oyj and Kone BV, and set the fine at a lower amount than determined in the Commission Decision; and

— order the Commission to bear the costs.

Pleas in law and main arguments

The Appellants submit that the contested judgment should be set aside on the following grounds:

As regards the infringement in Germany, the General Court erred in law in finding that the Commission did not manifestly exceed its margin of appreciation in assessing Kone's contribution to the opening of the investigation and the finding of the infringement in the Decision. The General Court's error of law meant that Kone was wrongly disqualified from immunity under the 2002 Notice on immunity from fines and reduction of fines in cartel cases (the '2002 Notice').

The General Court also erred in law in holding that the Commission's breach of the 2002 Notice did not violate the principle of legitimate expectations.

As regards the infringement in the Netherlands, the General Court erred in law in upholding the Commission's refusal to grant Kone any reduction in the fine under the 2002 Notice, because of Kone's characterisation of the information it provided in its leniency application. As a result, the GC upheld the Commission's decision insofar as it refused to grant Kone any reduction in the fine for the Netherlands cartel.

The General Court also erred in law in holding that the Commission did not breach the principle of equal treatment in concluding that Kone's submissions in respect of the Dutch cartel were not comparable to ThyssenKrupp's submissions in respect of the cartel in Belgium.

Action brought on 7 October 2011 — European Commission v Hellenic Republic

(Case C-517/11)

(2011/C 362/21)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia, I. Chatzigiannis and S. Petrova, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

Declare that the Hellenic Republic:

— by not having taken all the required steps to avoid the deterioration of the natural habitats and the habitats of species for which the special area of conservation (SAC) 1220009 was designated, and more particularly, by not taking all the steps required to carry out the measures related to the cessation of illegal drilling, irrigation, the disposal of industrial waste and the plan for management and integrated monitoring programme relating to the National Park of Koronia-Volvi and Macedonika Tempi Lakes, failed to fulfil its obligations under Article 6(2) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 of that directive;

— by not having completed the system for the collection and treatment of urban waste water for the agglomeration of Langada, failed to fulfil its obligations under Articles 3 and 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment.

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The infringement at issue concerns the deterioration and contamination of Lake Koronia (Prefecture of Thessalonika), as a result of a series of environmentally harmful actions, and the failure to comply with the regulatory framework established by the Hellenic Republic for the protection of that lake.

2. In order to comply with the Community legislation on the environment, the Greek authorities established a regime for the protection of the area (Ministerial Decision 6919/2004), a specific programme for the reduction of water pollution in the lake (Ministerial Decision 35308/1838/2005) and an action plan in relation to pollution caused by nitrates (Ministerial Decision 16175/824/2006) and approved 21 measures which were required for the restoration of the lake, within the framework of a master plan developed by the Prefecture ('the Master Plan'). At the same time, the Greek authorities ensured the funding of those measures from Community resources (see in particular Decision of the Cohesion Fund C(2005) 5779/19.12.2005 which funds infrastructure works) but also from national resources.

3. However, the Commission considers that the Greek authorities continue to fail to bring into force, to any substantial degree, the legal framework concerned. The problem of the deterioration of the lake fully remains and the implementation of certain of the 21 measures (an indispensable precondition for access to European Union funding) has therefore been delayed. In view of the lack of progress in connection with the implementation of the planned measures, the Commission decided to bring an action before the Court of Justice.

4. Specifically, the Commission considers that there is an infringement of Article 6(2), in conjunction with Article 7, of Directive 92/43/EEC, which provides that, in special areas of conservation, [Member States should prevent] the deterioration of natural habitats and the habitats of species as well as disturbances which affect the species for which the areas have been designated and the conservation of wild birds.

5. As assessed by the Commission, the Hellenic Republic has not taken all the steps necessary in order to implement all the measures which it itself designed and which were considered essential for the achievement of the objectives of the above provisions.

6. In particular:

   — The final cessation of illegal drilling, which the Greek authorities themselves considered essential for the restoration of the lake, has not been achieved.

   — The restriction of irrigation to a satisfactory level has not yet been carried out, as is shown by the fact that the Greek authorities have not provided information to demonstrate that the intended measures have been taken.

   — The study for the work of construction of common irrigation systems and enrichment of the Lake Koronia water table, has not yet been prepared, while the disposal of industrial waste has not been implemented, since the relevant contract for work of construction of fermentation basins in the lake has apparently not yet been entered into. Four polluting industries also continue to operate illegally.

   — The plan for the management and completion of the programmed monitoring of the National Park of Koroni-Volvi Lakes and Macedonika Tempi has not yet been adopted.

7. Further, the Commission considers that there is an infringement of Articles 3 and 4 of Directive 91/271/EEC in connection with the discharge of and collecting systems for urban waste water. In fact, in relation to the construction of the Langada collecting system and units for the reception of urban and industrial waste water, and the operation of biological treatment, the Commission has not been informed by the Greek authorities whether the intended first phase of the work has been completed, at the end of which 50 % of the population of the city of Langada will be served. In any event, the second phase of the Langada collecting system, at the end of which 100 % of the population will be covered, is still at the stage of preliminary study.

8. Finally, as regards the secondary treatment of urban waste water, the contract in question had not yet been entered into on the date when the Greek authorities replied to the reasoned opinion.

Action brought on 11 October 2011 — European Commission v French Republic

(Case C-520/11)

(2011/C 362/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Jimeno Fernández and D. Bianchi, Agents)

Defendant: French Republic

Form of order sought

The European Commission claims that the Court should:

— Declare that, by failing to comply with Commission Decision 2009/726/EC ordering France to suspend the application of certain interim protection measures prohibiting the introduction onto its territory, for the purpose of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed, the French Republic has failed to fulfil its obligations under Articles 4(3) TEU and 288 TFEU;

— order French Republic to pay the costs.

Pleas in law and main arguments

On 25 February 2009, France adopted a measure relating to the prohibition of import of milk and milk products for human consumption from ovine and caprine origin onto the French territory, in the light of transmissible spongiform encephalopathies intended for human consumption.

The Commission put the matter before the Standing Committee on the Food Chain and Animal Health (SCoFCAH) with a view to the extension, amendment or abrogation of the abovementioned national interim protective measures.

On the basis of the scientific opinions available and the consultations with the SCoFCAH, on 24 September 2009 the Commission considered that the interim protective measures adopted by France went beyond what was necessary to avoid a serious risk to human health, even taking into account the precautionary principle, and adopted, on the basis of Article 54(2) of Regulation No 178/2002, [1] Decision 2009/726/EC [2] ordering France to suspend the application of those measures.

The French Republic lodged an action for annulment of that decision. It did not, however, request suspension of operation of that decision.

The Commission claims that, by failing to comply with the abovementioned decision, the French Republic has failed to fulfil its obligations under Articles 4(3) TEU and 288 TFEU.

First, under Article 4(3) TEU, the Member States are to take any appropriate measure, general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions of the Union.

Second, under Article 288 TFEU, decisions are binding in their entirety on the parties to whom they are addressed in order to ensure their full effectiveness.

Lastly, since the action for annulment brought by the French Republic against Decision 2009/726/EC is not suspensive and since the French Republic has not requested suspension of operation of that decision, the application of the decision has not been suspended.

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

([2]) Commission Decision of 24 September 2009 concerning interim protection measures taken by France as regards the introduction onto its territory of milk and milk products coming from a holding where a classical scrapie case is confirmed (OJ 2009 L 258, p. 27).

GENERAL COURT

Order of the General Court of 25 October 2011 — Cadila Healthcare v OHIM — Laboratorios Inibsa (ZYDUS)

(Case T-287/08) ([1])

(Community trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2011/C 362/23)

Language of the case: English

Parties

Applicant: Cadila Healthcare Ltd (Ahmedabad, India) (represented by: S. Bailey, F. Potin and A. Juaristi, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Laboratorios Inibsa, SA (Llissa de Vall, Spain)

Re:

Action brought against the decision of the second Board of Appeal of OHIM of 5 May 2008 (Case R 1322/2007-2) relating to opposition proceedings between Laboratorios Inibsa, SA, and Cadila Healthcare Ltd.

Operative part of the order

1. *There is no longer any need to adjudicate in the present action.*

2. *The applicant is ordered to bear its own costs and those incurred by the defendant.*

([1]) OJ C 247, 27.9.2008.

Order of the General Court of 20 October 2011 — United Phosphorus v Commission

(Case T-95/09) ([1])

(Plant protection products — Active substance napropamide — Non-inclusion in Annex I to Directive 91/414/EEC — Adoption of a subsequent directive — No need to adjudicate)

(2011/C 362/24)

Language of the case: English

Parties

Applicant: United Phosphorus Ltd (Warrington, Cheshire, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)

Defendant: European Commission (represented by: L. Parpala and N.B. Rasmussen, and subsequently by L. Parpala, acting as Agents, and by J. Stuyck, lawyer)

Re:

Application for annulment of Commission Decision 2008/902/EC of 7 November 2008 concerning the non-inclusion of napropamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance.

Operative part of the order

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

2. *Each party shall bear its own costs.*

([1]) OJ C 102, 1.5.2009.

Action brought on 26 September 2011 — Peek & Cloppenburg v OHIM — Peek & Cloppenburg (Peek & Cloppenburg)

(Case T-506/11)

(2011/C 362/25)

Language in which the application was lodged: German

Parties

Applicant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: S. Abrar, lawyer)

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

Other party to the proceedings before the Board of Appeal: Peek & Cloppenburg (Hamburg, Germany)

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 28 February 2011 in Case R 53/2005-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Peek & Cloppenburg' for goods in Class 25

Proprietor of the mark or sign cited in the opposition proceedings: Peek & Cloppenburg

Mark or sign cited in opposition: another earlier sign, namely the company name 'Peek & Cloppenburg', which is valid in Germany

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(4) of Regulation No 207/2009 as the use of the subsequent mark 'Peek & Cloppenburg' may not be prohibited and there is no right to prohibit use throughout Germany under Paragraph 12 of the Markengesetz (Law on Trade Marks), and infringement of the first part of the first sentence of Article 76(1) of Regulation No 207/2009 as the Board of Appeal should have waited for a decision of the German Federal Court of Justice and the *res judicata* of a judgment in the German proceedings to have the trade mark removed from the register.

Action brought on 26 September 2011 — Peek & Cloppenburg v OHIM — Peek & Cloppenburg (Peek & Cloppenburg)

(Case T-507/11)

(2011/C 362/26)

Language in which the application was lodged: German

Parties

Applicant: Peek & Cloppenburg KG (Düsseldorf, Germany) (represented by: S. Abrar, lawyer)

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

Other party to the proceedings before the Board of Appeal: Peek & Cloppenburg (Hamburg, Germany)

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 28 February 2011 in Case R 262/2005-1;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Peek & Cloppenburg' for services in Class 35

Proprietor of the mark or sign cited in the opposition proceedings: Peek & Cloppenburg

Mark or sign cited in opposition: another earlier sign, namely the company name 'Peek & Cloppenburg', which is valid in Germany

Decision of the Opposition Division: the opposition was upheld

Decision of the Board of Appeal: the appeal was dismissed

Pleas in law: Infringement of Article 8(4) of Regulation No 207/2009 as the use of the subsequent mark 'Peek & Cloppenburg' may not be prohibited and there is no right to prohibit use throughout Germany under Paragraph 12 of the Markengesetz (Law on Trade Marks), and infringement of the first part of the first sentence of Article 76(1) of Regulation No 207/2009 as the Board of Appeal should have waited for a decision of the German Federal Court of Justice and the *res judicata* of a judgment in the German proceedings to have the trade mark removed from the register.

Action brought on 6 October 2011 — Aloe Vera of America v OHIM — Diviril (FOREVER)

(Case T-528/11)

(2011/C 362/27)

Language in which the application was lodged: English

Parties

Applicant: Aloe Vera of America, Inc. (Dallas, United States) (represented by: R. Niebel and F. Kerl, lawyers)

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

Other party to the proceedings before the Board of Appeal: Diviril-Distribuidora de Viveres do Ribatejo, Lda (Alenquer, Portugal)

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 8 August 2011 in case R 742/2010-4; and

— Order the defendant and, as appropriate, the other party to the proceedings before the Board of Appeal to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'FOREVER', for goods in classes 3, 5, 30, 31 and 32 — Community trade mark application No 5617089

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

Mark or sign cited in opposition: Portuguese trade mark registration No 297697 of the figurative mark '4 EVER', for goods in class 32

Decision of the Opposition Division: Upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal failed: (i) to correctly assess the proof of use provided by the other party to the proceedings before the Board of Appeal; (ii) to correctly identify the aural differences between the opposed trade marks; (iii) to correctly identify the conceptual differences between the trade marks in conflict; and (iv) to correctly identify the visual differences between the opposed trade marks.

Action brought on 29 September 2011 — Evonik Industries v OHIM — Impulso Industrial Alternativo (Impulso creador)

(Case T-529/11)

(2011/C 362/28)

Language in which the application was lodged: English

Parties

Applicant: Evonik Industries AG (Essen, Germany) (represented by: J. Albrecht, lawyer)

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

Other party to the proceedings before the Board of Appeal: Impulso Industrial Alternativo, SA (Madrid, Spain)

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 20 June 2011 in case R 1101/2010-2; and

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

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'Impulso creador', for various goods and services among which services in classes 35, 36, 37 and 42 — Community trade mark application No 6146187

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

Mark or sign cited in opposition: Spanish trade mark registration No 2633891 of the figurative mark 'IMPULSO', for services in classes 35 and 42; Community trade mark registration No 4438206 of the figurative mark 'IMPULSO', for services in classes 35 and 42

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal did not correctly consider the different overall impression of the conflicting trademarks.

Action brought on 7 October 2011 — Chivas v OHIM — Glencairn Scotch Whisky (CHIVALRY)

(Case T-530/11)

(2011/C 362/29)

Language in which the application was lodged: English

Parties

Applicant: Chivas Holdings (IP) Ltd (Renfrewshire, United Kingdom) (represented by: A. Carboni, Solicitor)

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

Other party to the proceedings before the Board of Appeal: Glencairn Scotch Whisky Co. Ltd (Glasgow, United Kingdom)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 14 July 2011 in case R 2334/2010-1, and remit the application to OHIM to allow it to proceed; and

— Order the defendant and any intervening parties in this appeal to bear their own costs and those of the applicant, incurred for these proceedings and those of the appeal procedure before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The word mark 'CHIVALRY', for goods and services in classes 33, 35 and 41 — Community trade mark application No 6616593

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

Mark or sign cited in opposition: United Kingdom trade mark registration No 1293610 of the figurative mark 'CHIVALRY', for goods in class 33; United Kingdom trade mark registration No 2468527 of the figurative mark 'CHIVALRY SPECIAL RESERVE SCOTCH WHISKY', for goods in class 33; Non-registered United Kingdom trade mark of the word 'CHIVALRY', used in the course of trade in respect of 'Whisky'

Decision of the Opposition Division: Partly upheld the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b), 76(1) and 75 of Council Regulation No 207/2009, as the Board of Appeal: (i) wrongly made a finding of fact as to the characteristics of the relevant public and failed to state the reasons for making the said finding; (ii) in the alternative to ground 1, having found that the relevant consumer is 'particularly brand-conscious and brand-loyal', incorrectly failed to appreciate that such characteristics would increase the attentiveness of the relevant consumer and accordingly reduce the likelihood of confusion occurring; (iii) failed to take into account of important guidance laid down by the Court of Justice and took the wrong approach when comparing the marks; (iv) wrongly identified the word 'CHIVALRY' as the visually dominant element of the earlier mark and incorrectly concluded that the othe5 figurative and word elements play a secondary role; (v) wrongly assumed that the aural comparison of the marks could be approached in the same way as the visual comparison; and (vi) incorrectly assessed likelihood of confusion.

Action brought on 10 October 2011 — Hultafors Group v OHIM — Società Italiana Calzature (Snickers)

(Case T-537/11)

(2011/C 362/30)

Language in which the application was lodged: English

Parties

Applicant: Hultafors Group AB (Bollebygd, Sweden) (represented by: A. Rasmussen and T. Swanstrøm, lawyers)

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

Other party to the proceedings before the Board of Appeal: Società Italiana Calzature SpA (Milano, Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 August 2011 in case R 2519/2010-4; and

— Order the defendant to bear its own as well as the third party's costs, including those incurred during the appeal and opposition proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The figurative mark in black and white 'Snickers', for goods in classes 8, 9 and 25 — Community trade mark application No 3740719

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

Mark or sign cited in opposition: Italian trade mark registration No 348149 of the word mark 'KICKERS', for goods in classes 3, 14, 16, 18, 24, 25, 28, 32 and 33

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

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 207/2009, as the Board of Appeal wrongly assumed that a risk of confusion exists between the trade mark application and the opposing trademark.

Action brought on 10 October 2011 — Fundação Calouste Gulbenkian v OHIM — Gulbenkian (GULBENKIAN)

(Case T-541/11)

(2011/C 362/31)

Language in which the application was lodged: English

Parties

Applicant: Fundação Calouste Gulbenkian (Lisboa, Portugal) (represented by: G. Marín Raigal, P. López Ronda and G. Macias Bonilla, lawyers)

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

Other party to the proceedings before the Board of Appeal: Micael Gulbenkian (Oeiras, Portugal)

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 15 July 2011 in case R 1436/2010-2;

— Review and consider the documents submitted during the opposition and appeal proceedings before the Office for Harmonisation in the Internal Market (Trade Marks and Designs) regarding the reputation of the earlier mark or order the defendant to rule a new decision considering the said documentation;

— Uphold in its entirety the opposition filed by the applicant;

— Order the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to definitively reject and in its entirety the contested Community trade mark No 4724647, of the word mark 'GULBENKIAN', for all the goods and services applied for in classes 4, 33, 35, 36, 37, 41, 42 and 44;

— Order the defendant to bear the costs incurred by the applicant in these proceedings; and

— Order the intervener, in case it appears before the Court, to pay the costs of the current proceedings, as well as those incurred by the applicant in the proceedings before the Office (opposition and appeal).

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 word mark 'GULBENKIAN', for among others goods and services in classes 4, 33, 35, 36, 37 and 42 — Community trade mark application No 4724647

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

Mark or sign cited in opposition: Well-known mark 'Fundação Calouste Gulbenkian' in Portugal for 'arts (plastic arts and music); charity (health and human development); science (research and promotion); education (support and development); technical and management services related to the oil industry'; Company name 'Fundação Calouste Gulbenkian' used for 'arts (plastic arts and music); charity (health and human development); science (research and promotion); education (support and development); technical and management services related to the oil industry'; Logos Nos 5.351 and 5.352 'Fundação Calouste Gulbenkian' used for 'arts (plastic arts and music); charity (health and human development); science (research and promotion); education (support and development); technical and management services related to the oil industry'.

Decision of the Opposition Division: Partially upheld the opposition

Decision of the Board of Appeal: Partially annulled the decision of the Opposition Division and rejected the appeal for the remaining part

Pleas in law: Infringement of Articles 8(1)(b), 8(4) and 8(5) of Council Regulation No 207/2009, and the applicable case-law, as the Board of Appeal incorrectly appreciated the various factors to be taken into account when assessing likelihood of confusion.

Order of the General Court of 19 October 2011 — Scovill Fasteners v Commission

(Case T-447/07) ([1])

(2011/C 362/32)

Language of the case: English

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

([1]) OJ C 37, 9.2.2008.

Order of the General Court of 18 October 2011 — Confortel Gestión v OHIM — Homargrup (CONFORTEL AQUA 4)

(Case T-521/10) ([1])

(2011/C 362/33)

Language of the case: Spanish

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

([1]) OJ C 30, 29.1.2011.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 14 September 2011 — A v Commission

(Case F-12/09) [1]

(Staff case — Officials — Occupational disease — Relationship between the procedures under Articles 73 and 78 of the Staff Regulations — Provisional allowance — Reimbursement of medical costs — Access to the individual file)

(2011/C 362/34)

Language of the case: French

Parties

Applicant: A (P., France) (represented by: B. Cambier and A. Paternostre, lawyers)

Defendant: Commission (represented by: J. Currall and J. Baquero Cruz, acting as Agents)

Re:

Application that the Commission be declared liable for certain faults allegedly committed against the applicant in the context of the procedure under Article 73 of the Staff Regulations, and for the annulment of various decisions refusing to apply to the applicant the provisions of Article 73(2)(b) of the Staff Regulations, to communicate to him a series of documents forming part of his medical file and to reimburse him for certain medical costs — Application for damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

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[1] OJ C 113, 16.5.2009, p. 45.

Judgment of the Civil Service Tribunal (Third Chamber) of 13 September 2011 Michail v Commission

(Case F-100/09) [1]

(Civil service — Official — Res judicata — Duty to provide assistance — Article 24 of the Staff Regulations — Psychological harassment)

(2011/C 362/35)

Language of the case: Greek

Parties

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

Defendant: Commission (represented by: J. Currall and J. Baquero Cruz, Agents, and by E. Bourtzalas and E. Antypa, lawyers)

Re:

Annulment of the defendant's decision to reject the request for assistance made under Article 24 of the Staff Regulations in respect of the psychological harassment which the applicant claims to have suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Michail to bear his own costs and those of the Commission.*

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[1] OJ C 63, 13.3.2010, p. 52.

Judgment of the Civil Service Tribunal (Third Chamber) of 13 September 2011 — Nastvogel v Council

(Case F-4/10) [1]

(Staff case — Staff reports — Opinion of the Reports Committee — Downgrading of analytical assessments — Dialogue between staff member and assessor — Consultation of the various superiors — Knowledge of staff member's work by second assessor — Statement of reasons — Sick leave taken into account)

(2011/C 362/36)

Language of the case: French

Parties

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

Defendant: Council (represented by: M. Vitsentzatos and K. Zieleśkiewicz, acting as Agents)

Re:

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

Operative part of the judgment

The Tribunal:

1. *Annuls Mrs Nastvogel's staff report for the period from 1 July 2006 to 31 December 2007;*

2. *Orders the Council of the European Union to pay the costs.*

([1]) OJ C 63, 13.3.2010, p. 54.

Judgment of the Civil Service Tribunal (Third Chamber) of 28 September 2011 — AC v Council

(Case F-9/10) ([1])

(Civil service — Promotion — 2009 promotion exercise — Comparative examination of merit — Manifest error of assessment)

(2011/C 362/37)

Language of the case: French

Parties

Applicant: AC (Brussels, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Council (represented by: M. Bauer and K. Zieleśkiewicz, acting as Agents)

Re:

Application for annulment of the decision not to include the applicant in the list of persons promoted to grade AD 13 in the 2009 promotion exercise.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders AC to pay the entirety of the costs.*

([1]) OJ C 113, 1.5.2010, p. 79.

Judgment of the Civil Service Tribunal (Third Chamber) of 28 September 2011 — Allen v Commission

(Case F-23/10) ([1])

(Civil service — Social security — Serious illness — Article 72 of the Staff Regulations — Extension of sickness cover under the JSIS — Criterion of absence of insurance under another scheme)

(2011/C 362/38)

Language of the case: English

Parties

Applicant: Finola Allen (Armacão de Pera, Portugal) (represented by: L. Levi and A. Blot, lawyers)

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

Re:

Action for annulment of the decision to reject the application for recognition that the applicant has a serious illness.

Operative part of the judgment

The Tribunal:

1. *Annuls the decisions of 30 June 2009, 17 July 2009 and 7 January 2010 by which the European Commission refused to recognise that Ms Allen was suffering from a serious illness and refused to extend her sickness cover;*

2. *Dismisses the action as to the remainder of the heads of claim;*

3. *Orders the European Commission to bear all the costs.*

([1]) OJ C 161, 19.6.2010, p. 58.

Judgment of the Civil Service Tribunal (Third Chamber) of 28 September 2011 — AZ v Commission

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

(Civil service — Promotion — 2009 promotion exercise — Ability to work in a third language — Existence of a disciplinary procedure — Exclusion from the promotion exercise)

(2011/C 362/39)

Language of the case: French

Parties

Applicant: AZ (Thionville, France) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: Commission (represented by: D. Martin and J. Baquero Cruz, acting as Agents)

Re:

Application for annulment of the decision to exclude the applicant from the 2009 promotion exercise and order that the Commission pay to him a sum of compensation for non-material damage.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders AZ to pay the entirety of the costs.*

([1]) OJ C 179, 3.7.2010, p. 58.

Judgment of the Civil Service Tribunal (Third Chamber) of 14 September 2011 — Hecq v Commission

(Case F-47/10) [1]

(Civil service — Officials — Social security — Occupational disease — Articles 73 and 78 of the Staff Regulations — Correctness of the opinion of the medical committee — Refusal to accept that the applicant suffers from partial permanent invalidity)

(2011/C 362/40)

Language of the case: French

Parties

Applicant: Hecq (Chaumont-Gistoux, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission (represented by: J. Currall and D. Martin, acting as Agents, and J.-L. Fagnart, lawyer)

Re:

Application for the annulment of the Commission decisions refusing to accept that the applicant suffers from partial permanent invalidity within the meaning of Article 73 of the Staff Regulations and making him liable for part of the fees and expenses incurred during the proceedings of the medical committee.

Operative part of the judgment

The Tribunal:

1. *Declares that there is no need to adjudicate on the claim for annulment of the decisions of European Commission of 7 September 2009 in so far as they require Mr Hecq to pay the costs and fees of the doctor whom he nominated to represent him in the medical committee and half of the costs and fees of the third doctor in the medical committee nominated by mutual agreement;*

2. *Dismisses the claims for annulment of the decisions of 7 September 2009 in so far as they refuse to award Mr Hecq a rate of permanent invalidity as unfounded;*

3. *Orders Mr Hecq to pay the entirety of the costs.*

[1] OJ C 221, 14.8.2010, p. 61.

Order of the Civil Service Tribunal (Full Court) of 27 September 2011 — De Nicola v EIB

(Case F-55/08 DEP)

(Staff cases — Procedure — Taxation of costs — Recoverable costs — Essential costs — Fees paid by an institution to its lawyer — Obligation for an unsuccessful applicant to pay those fees — Principle of equal treatment — Effective judicial protection — Conditions)

(2011/C 362/41)

Language of the case: Italian

Parties

Applicant: De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank (EIB) (represented by: F. Martin, Agent, assisted by A. Dal Ferro, lawyer)

Re:

Request for taxation of costs lodged by the defendant following the judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 in Case F-55/08.

Operative part of the order

The amount of the costs recoverable by the European Investment Bank in Case F-55/08 De Nicola v EIB is fixed at EUR 6 000.

Order of the Civil Service Tribunal (Third Chamber) of 12 September 2011 — Cervelli v Commission

(Case F-98/10) [1]

(Civil service — Officials — Expatriation allowance — Request for review — Material new facts — Action manifestly inadmissible)

(2011/C 362/42)

Language of the case: French

Parties

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

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

Re:

Application for annulment of the Commission's decision refusing to grant the applicant the expatriation allowance.

Operative part of the order

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

2. *Ms Cervelli is ordered to bear all the costs.*

(1) OJ C 13, 15.1.2011, p. 42.

Order of the Civil Service Tribunal (Third Chamber) of 28 September 2011 — Hecq v Commission

(Case F-12/11) (1)

(Civil service — Occupational disease — Invalidity procedure — Application to resume professional activity — Application for damages and interest)

(2011/C 362/43)

Language of the case: French

Parties

Applicant: Hecq (Chaumont-Gistoux, Belgium) (represented by: L. Vogel, lawyer)

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

Re:

Action for annulment of the implied decision rejecting the applicant's request to resume his professional activities and for full payment of his remuneration as an official, calculated from 1 August 2003, and for damages, plus default interest calculated at a rate of 7 % per annum from 1 August 2003.

Operative part of the order

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

2. *Mr Hecq shall pay the entirety of the costs.*

(1) OJ C 113, 9.4.11, p. 22.

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