ISSN 1977-091X

Official Journal of the European Union

C 174

English edition

Volume 55

16 June 2012

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EUR 3

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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

(2012/C 174/01)

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

OJ C 165, 9.6.2012

Past publications

OJ C 157, 2.6.2012

OJ C 151, 26.5.2012

OJ C 138, 12.5.2012

OJ C 133, 5.5.2012

OJ C 126, 28.4.2012

OJ C 118, 21.4.2012

These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2012/C 174/02)

On 16 May 2012, the Plenary Meeting of the General Court decided, in response to the departure of Ms Cremona, to amend the decisions of the Plenary Meetings of 20 September 2010, [1] 26 October 2010, [2] 29 November 2010, [3] 20 September 2011 [4] and 25 November 2011 [5] on the assignment of Judges to Chambers.

For the period from 16 May 2012 to the date of entry into office of the Italian or Maltese Judge, the assignment of Judges to Chambers is as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Azizi, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias and Ms Kancheva, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;
Mr Frimodt Nielsen, Judge;
Ms Kancheva, Judge.

Second Chamber (Extended Composition), sitting with five Judges:

Mr Forwood, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Second Chamber, sitting with three Judges:

Mr Forwood, President of the Chamber;
Mr Dehousse, Judge;
Mr Schwarcz, Judge.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Czúcz, President of the Chamber, Ms Labucka, Mr Frimodt Nielsen, Mr Gratsias and Ms Kancheva, Judges.

Third Chamber, sitting with three Judges:

Mr Czúcz, President of the Chamber;
Ms Labucka, Judge;
Mr Gratsias, Judge.

Fourth Chamber (Extended Composition), sitting with five Judges:

Ms Pelikánová, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fourth Chamber, sitting with three Judges:

Ms Pelikánová, President of the Chamber;
Ms Jürimäe, Judge;
Mr Van der Woude, Judge.

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[1] OJ C 288, 23.10.2010, p. 2.
[2] OJ C 317, 20.11.2010, p. 5.
[3] OJ C 346, 18.12.2010, p. 2.
[4] OJ C 305, 15.10.2011, p. 2.
[5] OJ C 370, 17.12.2011, p. 5.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Papasavvas, President of the Chamber, Mr Vadapalas, Ms Jürimäe, Mr O'Higgins and Mr Van der Woude, Judges.

Fifth Chamber, sitting with three Judges:

Mr Papasavvas, President of the Chamber;
Mr Vadapalas, Judge;
Mr O'Higgins, Judge.

Sixth Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Popescu, Judges.

Sixth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;
Mr Wahl, Judge;
Mr Soldevila Fragoso, Judge.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr Dittrich, President of the Chamber, Mr Dehousse, Ms Wiszniewska-Białecka, Mr Prek and Mr Schwarcz, Judges.

Seventh Chamber, sitting with three Judges:

Mr Dittrich, President of the Chamber;
Ms Wiszniewska-Białecka, Judge;
Mr Prek, Judge.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Truchot, President of the Chamber, Ms Martins Ribeiro, Mr Wahl, Mr Soldevila Fragoso and Mr Popescu, Judges.

Eighth Chamber, sitting with three Judges:

Mr Truchot, President of the Chamber;
Ms Martins Ribeiro, Judge;
Mr Popsecu, Judge.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 26 April 2012 — European Commission v Republic of Cyprus

(Case C-125/09) [1]

(Failure of a Member State to fulfil obligations — Electronic communications networks and services — Directives 2002/21/EC and 2002/20/EC — Rights of way — Failure to transpose within the prescribed period)

(2012/C 174/03)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: G. Zavvos, A. Nijenhuis and H. Krämer, acting as Agents)

Defendant: Republic of Cyprus (represented by: K. Lykourgos and A. Pantazi-Lamprou, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 11(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) — Infringement of Article 4(1) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive) (OJ 2002 L 108, p. 21) — Grant and authorisation of rights to install facilities on, over or under public or private property in favour of an undertaking authorised to provide electronic communications networks

Operative part of the judgment

The Court:

1. *Finds that, by failing to ensure the grant of rights of way on, over or under public property on the basis of transparent procedures, applied without discrimination and without delay, in accordance with Article 11(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and Article 4(1) of Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (Authorisation Directive), the Republic of Cyprus failed to fulfil its obligations under those directives;*

2. *Orders the Republic of Cyprus to pay the costs.*

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[1] OJ C 141, 20.6.2009.

Judgment of the Court (Fifth Chamber) of 3 May 2012 (reference for a preliminary ruling from the Verwaltungsgericht Frankfurt am Main (Germany) — Georg Neidel v Stadt Frankfurt am Main

(Case C-337/10) [1]

(Social policy — Directive 2003/88/EC — Working conditions — Organisation of working time — Right to paid annual leave — Allowance in lieu in the event of sickness — Public servants (firemen))

(2012/C 174/04)

Language of the case: German

Referring court

Verwaltungsgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Georg Neidel

Defendant: Stadt Frankfurt am Main

Re:

Reference for a preliminary ruling — Verwaltungsgericht Frankfurt am Main — Interpretation of Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9) — Entitlement to an allowance in lieu of paid annual leave not taken in full because of unfitness for service lasting for several years before retirement — Scope *ratione personae* of Directive 2003/88/EC — Public servants (firemen)

Operative part of the judgment

1. *Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as applying to a public servant carrying out the activities of a fireman in normal circumstances.*

2. *Article 7(2) of Directive 2003/88 must be interpreted as meaning that a public servant is entitled, on retirement, to an allowance in lieu of paid annual leave not taken because he was prevented from working by sickness.*

3. *Article 7 of Directive 2003/88 must be interpreted as not precluding provisions of national law conferring on a public servant an entitlement to further paid leave in addition to the entitlement to a minimum paid annual leave of four weeks, which do not provide for the payment of an allowance in lieu if a public servant who is retiring has been unable to use that additional entitlement because he was prevented from working by sickness.*

4. *Article 7(2) of Directive 2003/88 must be interpreted as precluding a provision of national law which restricts, by a carry-over period of nine months on expiry of which the entitlement to paid annual leave lapses, the right of a public servant who is retiring to cumulate the allowances in lieu of paid annual leave not taken because he was unfit for service.*

([1]) OJ C 301, 6.11.2010.

Judgment of the Court (Grand Chamber) of 2 May 2012 (reference for a preliminary ruling from the High Court of Justice (Chancery Division) — United Kingdom) — SAS Institute Inc. v World Programming Ltd

(Case C-406/10) ([1])

(Intellectual property — Directive 91/250/EEC — Legal protection of computer programs — Articles 1(2) and 5(3) — Scope of protection — Creation directly or via another process — Computer program protected by copyright — Reproduction of the functions by a second program without access to the source code of the first program — Decompilation of the object code of the first computer program — Directive 2001/29/EC — Copyright and related rights in the information society — Article 2(a) — User manual for a computer program — Reproduction in another computer program — Infringement of copyright — Condition — Expression of the intellectual creation of the author of the user manual)

(2012/C 174/05)

Language of the case: English

Referring court

High Court of Justice (Chancery Division)

Parties to the main proceedings

Applicant: SAS Institute Inc.

Defendant: World Programming Ltd

Re:

Reference for a preliminary ruling — High Court of Justice (Chancery Division) — Interpretation of Articles 2(1) and 5(3) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs (OJ 1991 L 122, p. 42) — Extent of protection — Creation, directly or via a process such as decompilation of the object code, to create another computer program which replicates the functions of another computer program, protected by copyright, without access to the source code of the latter program.

Operative part of the judgment

1. *Article 1(2) of Council Directive 91/250/EEC of 14 May 1991 on the legal protection of computer programs must be interpreted as meaning that neither the functionality of a computer program nor the programming language and the format of data files used in a computer program in order to exploit certain of its functions constitute a form of expression of that program and, as such, are not protected by copyright in computer programs for the purposes of that directive.*

2. *Article 5(3) of Directive 91/250 must be interpreted as meaning that a person who has obtained a copy of a computer program under a licence is entitled, without the authorisation of the owner of the copyright, to observe, study or test the functioning of that program so as to determine the ideas and principles which underlie any element of the program, in the case where that person carries out acts covered by that licence and acts of loading and running necessary for the use of the computer program, and on condition that that person does not infringe the exclusive rights of the owner of the copyright in that program.*

3. *Article 2(a) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be interpreted as meaning that the reproduction, in a computer program or a user manual for that program, of certain elements described in the user manual for another computer program protected by copyright is capable of constituting an infringement of the copyright in the latter manual if — this being a matter for the national court to ascertain — that reproduction constitutes the expression of the intellectual creation of the author of the user manual for the computer program protected by copyright.*

([1]) OJ C 346, 18.12.2010.

Judgment of the Court (Second Chamber) of 26 April 2012 (reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof — Germany) — Wolfgang Hofmann v Freistaat Bayern

(Case C-419/10) [1]

(Directive 2006/126/EC — Mutual recognition of driving licences — Refusal by a Member State to recognise, in favour of a person whose driving licence was withdrawn on its territory, the validity of a driving licence issued by another Member State)

(2012/C 174/06)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Wolfgang Hofmann

Defendant: Freistaat Bayern

Re:

Reference for a preliminary ruling — Bayerischer Verwaltungsgerichtshof — Interpretation of Articles 2(1) and 11(4) of Directive 2006/126/EC of the European Parliament and of the Council of 20 December 2006 on driving licences (OJ 2006 L 403, p. 18) — Mutual recognition of driving licences — Refusal by a Member State to recognise the validity of a driving licence issued by another Member State to a person whose driving licence is withdrawn in its territory.

Operative part of the judgment

Articles 2(1) and 11(4), second subparagraph, of European Parliament and Council Directive 2006/126/EC of 20 December 2006 on driving licences must be interpreted as precluding a Member State from refusing, outside any period of prohibition on applying for a new driving licence imposed on the holder of a driving licence issued by another Member State and when the condition of normal residence in the territory of the latter has been complied with, to recognise the validity of that driving licence, where the said holder has been subject, in the territory of the first Member State, to a measure withdrawing a previous driving licence.

[1] OJ C 301, 6.11.2010.

Judgment of the Court (Third Chamber) of 26 April 2012 (reference for a preliminary ruling from the Tribunal Supremo — Spain) — Asociación Nacional de Expendedores de Tabaco y Timbre (ANETT) v Administración del Estado

(Case C-456/10) [1]

(Free movement of goods — Articles 34 TFEU and 37 TFEU — National legislation prohibiting tobacco retailers from importing tobacco products — Rule concerning the existence and operation of a monopoly on the marketing of tobacco products — Measures having equivalent effect to quantitative restrictions — Justification — Consumer protection)

(2012/C 174/07)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Asociación Nacional de Expendedores de Tabaco y Timbre (ANETT)

Defendant: Administración del Estado

Intervening parties: Unión de Asociaciones de Estanqueros de España, Logivend SLU, Organización Nacional de Asociaciones de Estanqueros

Re:

Reference for a preliminary ruling — Tribunal Supremo — Interpretation of Article 34 TFEU — National monopoly on the marketing of tobacco products — Prohibition of tobacco retailers from importing tobacco products imposed for the benefit of wholesalers — Proportionality

Operative part of the judgment

Article 34 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits tobacco retailers from importing tobacco products from other Member States.

[1] OJ C 328, 4.12.2010.

Judgment of the Court (First Chamber) of 26 April 2012 (reference for a preliminary ruling from the Pest Megyei Bíróság (Hungary)) — Nemzeti Fogyasztóvédelmi Hatóság v Invitel Távközlési Zrt

(Case C-472/10) [1]

(Directive 93/13/EEC — Article 3(1) and (3) — Articles 6 and 7 — Consumer contracts — Unfair terms — Unilateral amendment of the terms of a contract by a seller or supplier — Action for an injunction brought in the public interest and on behalf of consumers by a body appointed by national legislation — Declaration of the unfair nature of a term — Legal effects)

(2012/C 174/08)

Language of the case: Hungarian

Referring court

Pest Megyei Bíróság

Parties to the main proceedings

Applicant: Nemzeti Fogyasztóvédelmi Hatóság

Defendant: Invitel Távközlési Zrt

Re:

Reference for a preliminary ruling — Pest Megyei Bíróság — Interpretation of Article 3(1), in conjunction with points 1(j) and 2(d) of the annex and Article 6(1), of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) — Term allowing a seller or supplier to amend unilaterally the terms of a contract without a valid reason and without explicitly describing the method by which prices vary — Unfairness of the term — Legal effects of a finding of unfairness of a term in the context of an action in the public interest

Operative part of the judgment

1. *It is for the national court, ruling on an action for an injunction, brought in the public interest and on behalf of consumers by a body appointed by national law, to assess, with regard to Article 3(1) and (3) of Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, the unfair nature of a term included in the general business conditions of consumer contracts by which a seller or supplier provides for a unilateral amendment of fees connected with the service to be provided, without setting out clearly the method of fixing those fees or specifying a valid reason for that amendment. As part of this assessment, the national court must determine, inter alia, whether, in light of all the terms appearing in the general business conditions of consumer contracts which include the contested term, and in the light of the national legislation setting out rights and obligations which could supplement those provided by the general business conditions at issue, the reasons for, or the method of, the amendment of the fees connected with the service to be provided are set out in plain, intelligible language and, as the case may be, whether consumers have a right to terminate the contract.*

2. *Article 6(1) of Directive 93/13, read in conjunction with Article 7(1) and (2) thereof, must be interpreted as meaning that:*

   — *it does not preclude the declaration of invalidity of an unfair term included in the standard terms of consumer contracts in an action for an injunction, provided for in Article 7 of that directive, brought against a seller or supplier in the public interest, and on behalf of consumers, by a body appointed by national legislation from producing, in accordance with that legislation, effects with regard to all consumers who concluded with the seller or supplier concerned a contract to which the same general business conditions apply, including with regard to those consumers who were not party to the injunction proceedings;*

   — *where the unfair nature of a term in the general business conditions has been acknowledged in such proceedings, national courts are required, of their own motion, and also with regard to the future, to draw all the consequences which are provided by national law in order to ensure that consumers who have concluded a contract with the seller or supplier to which those general business conditions apply will not be bound by that term.*

[1] OJ C 346, 18.12.2010.

Judgment of the Court (Second Chamber) of 26 April 2012 — European Commission v Kingdom of the Netherlands

(Case C-508/10) [1]

(Failure of a Member State to fulfil obligations — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Application for long-term resident status — Application for a residence permit in a second Member State made by a third-country national who has already acquired long-term resident status in a first Member State or by a member of his family — Amount of the charges levied by the competent authorities — Disproportionate charges — Obstacle to the exercise of the right of residence)

(2012/C 174/09)

Language of the case: Dutch

Parties

Applicant: European Commission (represented by: M. Condou-Durande and R. Troosters, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C. Wissels and J. Langer, acting as Agents)

Intervening party in support of the defendant: Hellenic Republic (represented by: T. Papadopoulou, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44) — Application for long-term resident status — Administrative charges — Excessive and unfair amounts — Means of hindering the exercise of the right of residence

Operative part of the judgment

The Court:

1. *Declares that, by applying (i) to third-country nationals seeking long-term resident status in the Netherlands, (ii) to those who, having acquired that status in a Member State other than the Kingdom of the Netherlands, are seeking to exercise the right to reside in that Member State, and (iii) to members of their families seeking authorisation to accompany or join them, excessive and disproportionate administrative charges which are liable to create an obstacle to the exercise of the rights conferred by Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, 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;*

3. *Orders the Hellenic Republic to bear its own costs.*

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (Third Chamber) of 26 April 2012 (reference for a preliminary ruling from the Østre Landsret (Denmark) — DR, TV2 Danmark A/S v NCB — Nordisk Copyright Bureau

(Case C-510/10) ([1])

(Approximation of laws — Copyright and related rights — Directive 2001/29/EC — Article 5(2)(d) — Right to communicate works to the public — Exception to the reproduction right — Ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts — Recording made with the facilities of a third party — Obligation of the broadcasting organisation to pay compensation for any adverse effects of the actions and omissions of the third party)

(2012/C 174/10)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: DR, TV2 Danmark A/S

Defendant: NCB — Nordisk Copyright Bureau

Re:

Reference for a preliminary ruling — Østre Landsret — Interpretation of Article 5(2)(d) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10) — Conditions for benefiting from an exception to the reproduction right — Ephemeral recordings of works made by broadcasting organisations by means of their own facilities and for their own broadcasts — Broadcasting organisation which has commissioned recordings from independent external television production companies for the purpose of broadcasting them in the course of its own transmissions

Operative part of the judgment

1. *The expression 'by means of their own facilities' in Article 5(2)(d) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society must be given an independent and uniform interpretation within the framework of European Union law.*

2. *Article 5(2)(d) of Directive 2001/29, read in the light of recital 41 in the preamble to that directive, must be interpreted as meaning that a broadcasting organisation's own facilities include the facilities of any third party acting on behalf of or under the responsibility of that organisation.*

3. *For the purposes of ascertaining whether a recording made by a broadcasting organisation, for its own broadcasts, with the facilities of a third party, is covered by the exception laid down in Article 5(2)(d) of Directive 2001/29 in respect of ephemeral recordings, it is for the national court to assess whether, in the circumstances of the dispute in the main proceedings, that party may be regarded as acting specifically 'on behalf of' the broadcasting organisation or, at the very least, 'under the responsibility' of that organisation. As regards whether that party may be regarded as acting 'under the responsibility' of the broadcasting organisation, it is essential that, vis-à-vis other persons, among others the authors who may be harmed by an unlawful recording of their works, the broadcasting organisation is required to pay compensation for any adverse effects of the acts and omissions of the third party, such as a legally independent external television production company, connected with the recording in question, as if the broadcasting organisation had itself carried out those acts and made those omissions.*

([1]) OJ C 346, 18.12.2010.

Judgment of the Court (Third Chamber) of 3 May 2012 (reference for a preliminary ruling from the First-Tier Tribunal (Tax Chamber) — United Kingdom) — Lebara Ltd v Commissioners for Her Majesty's Revenue and Customs

(Case C-520/10) ([1])

(Taxation — Sixth VAT Directive — Article 2 — Supply of services for consideration — Telecommunications services — Prepaid phonecards displaying information for making international calls — Marketing through a network of distributors)

(2012/C 174/11)

Language of the case: English

Referring court

First Tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Lebara Ltd

Defendant: Commissioners for Her Majesty's Revenue and Customs

Re:

Reference for a preliminary ruling — First-Tier Tribunal (Tax Chamber) — Interpretation of Article 2(1) 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) — Phonecards sold by a taxable person residing in a Member State to a distributor residing in another Member State and sold on by that distributor to persons who use them to make telephone calls — Transaction which can be broken down into several parts — Arrangements for charging value added tax

Operative part of the judgment

Point (1) of Article 2 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 2003/92/EC of 7 October 2003, must be interpreted as meaning that a telecommunications services operator which offers telecommunications services consisting in selling to a distributor phonecards which display all the information necessary for making international telephone calls by means of the infrastructure provided by that operator and which are resold by the distributor, in its name and on its own behalf, to end users, either directly or through other taxable persons such as wholesalers or retailers, carries out a supply of telecommunications services for consideration to the distributor. On the other hand, that operator does not carry out a second supply of services for consideration, this time to the end user, where that user, having purchased the phonecard, exercises the right to make telephone calls using the information on the card.

([1]) OJ C 30, 29.1.2011.

Judgment of the Court (Grand Chamber) of 24 April 2012 (reference for a preliminary ruling from the Tribunale di Bolzano — Italy) — Servet Kamberaj v Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano

(Case C-571/10) ([1])

(Area of Freedom, Justice and Security — Article 34 of the Charter of Fundamental Rights of the European Union — Directive 2003/109/EC — Status of third-country nationals who are long-term residents — Right to equal treatment with regard to social security, social assistance and social protection — Derogation from the principle of equal treatment for social assistance and social protection measures — Exclusion of 'core benefits' from the scope of that derogation — National legislation providing for housing benefit for low income tenants — Amount of funds for third-country nationals determined on the basis of a different weighted average — Rejection of an application for housing benefit owing to the exhaustion of the funds for third-country nationals)

(2012/C 174/12)

Language of the case: Italian

Referring court

Tribunale di Bolzano

Parties to the main proceedings

Applicant: Servet Kamberaj

Defendants: Istituto per l'Edilizia sociale della Provincia autonoma di Bolzano (IPES), Giunta della Provincia autonoma di Bolzano, Provincia autonoma di Bolzano

Interveners in support of the defendants: Associazione Porte Aperte/Offene Türen, Human Rights International, Associazione Volontarius, Fondazione Alexander Langer

Re:

Reference for a preliminary ruling — Tribunale di Bolzano — Protection of linguistic minorities — Provincial legislation giving effect to the fundamental principle of the national constitutional system that linguistic minorities are to be protected — Social policy — Application of different coefficients in order to determine the amount intended for housing allowances for

citizens of the Union and for nationals of non-member countries — Different selection criteria applicable for the grant of the housing allowance to citizens of the Union and to nationals of non-member countries — Compatibility with Articles 2 and 6 TEU and with Articles 21 and 34 of the Charter of Fundamental Rights — Compatibility with Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22) and with Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2003 L 16, p. 44) — Direct applicability of provisions of EU law –Compatibility with Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR') and Article 1 of Protocol No 12 thereto — Direct applicability of the ECHR pursuant to Article 6 TEU — Applicable sanctions for the purpose of Article 15 of Directive 2000/43/EC

Operative part of the judgment

1. *The first and fourth to seventh questions referred by the Tribunale di Bolzano in Case C-571/10 are inadmissible.*

2. *The reference made by Article 6(3) TEU to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950, does not require the national court, in case of conflict between a provision of national law and that convention, to apply the provisions of that convention directly, disapplying the provision of domestic law incompatible with the convention.*

3. *Article 11(1)(d) of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents must be interpreted as precluding a national or regional law, such as that at issue in the main proceedings, which provides, with regard to the grant of housing benefit, for different treatment for third country nationals enjoying the status of long-term resident conferred pursuant to the provisions of that directive compared to that accorded to nationals residing in the same province or region when the funds for the benefit are allocated, in so far as such a benefit falls within one of the three categories referred to in that provision and Article 11(4) of that directive does not apply.*

(1) OJ C 46, 12.2.2011.

Judgment of the Court (Third Chamber) of 26 April 2012 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Staatssecretaris van Financiën v L.A.C. van Putten (C-578/10), P. Mook (C-579/10), G. Frank (C-580/10)

(Joined Cases C-578/10 to C-580/10) (1)

(Articles 18 EC and 56 EC — Motor vehicles — Use in a Member State of a borrowed private motor vehicle which is registered in another Member State — Taxation of that vehicle in the first Member State on its first use on the national road network)

(2012/C 174/13)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Staatssecretaris van Financiën

Defendants: L.A.C. van Putten (C-578/10), P. Mook (C-579/10), G. Frank (C-580/10)

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden — Interpretation of Article 18 EC (now Article 21 TFEU) — National rule imposing a registration tax on the first use of a vehicle on the national road network — Liability to tax of a person residing in the Member State in question who has borrowed a vehicle registered in another Member State from a person residing in that State for the purposes of private use for a brief period in the first Member State

Operative part of the judgment

Article 56 EC must be interpreted as meaning that it precludes legislation of a Member State which requires residents who have borrowed a vehicle registered in another Member State from a resident of that State to pay, on first use of that vehicle on the national road network, the full amount of a tax normally due on registration of a vehicle in the first Member State, without taking account of the duration of the use of that vehicle on that road network and without that person being able to invoke a right to exemption or reimbursement where that vehicle is neither intended to be used essentially in the first Member State on a permanent basis nor, in fact, used in that way.

(1) OJ C 72, 5.3.2011.

Judgment of the Court (Fourth Chamber) of 3 May 2012 (reference for a preliminary ruling from the Kammarrätten i Stockholm — Migrationsöverdomstolen — Sweden) — Migrationsverket v Nurije Kastrati, Valdrina Kastrati, Valdrin Kastrati

(Case C-620/10) [1]

(Dublin system — Regulation (EC) No 343/2003 — Procedure for determining the Member State responsible for examining an asylum application — Third-country nationals in possession of a valid visa issued by the 'Member State responsible' within the meaning of Regulation No 343/2003 — Asylum application lodged in a Member State other than the State responsible pursuant to that regulation — Application for a residence permit in a Member State other than the State responsible followed by the withdrawal of the asylum application — Withdrawal occurring before the Member State responsible accepted that it should take charge — Withdrawal terminating the procedures set up by Regulation No 343/2003)

(2012/C 174/14)

Language of the case: Swedish

Referring court

Kammarrätten i Stockholm — Migrationsöverdomstolen

Parties to the main proceedings

Applicant: Migrationsverket

Defendants: Nurije Kastrati, Valdrina Kastrati, Valdrin Kastrati

Re:

Reference for a preliminary ruling — Kammarrätten i Stockholm — Migrationsöverdomstolen — Interpretation of the second subparagraph of Article 4(5), Article 5(2) and Article 16(3) and (4) of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1) — Conditions for application of the regulation in the case of the withdrawal of an asylum application — Withdrawal of asylum applications made by third-country nationals in a Member State A during the procedure for the determination of the Member State responsible for examining the application under that regulation and following agreement by a Member State B to take charge of the applicants — Decision by the competent authority in Member State A to reject the applications for asylum and to set in train the procedure for the transfer of the applicants to Member State B, regardless of the fact that the asylum applications made in Member State A have been withdrawn

Operative part of the judgment

Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national must be interpreted as meaning that the withdrawal of an application for asylum within the terms of Article 2(c) of that regulation, which occurs before the Member State responsible for examining that application has agreed to take charge of the applicant, has the effect that that regulation can no longer be applicable. In such a case, it is for the Member State within the territory of which the application was lodged to take the decisions required as a result of that withdrawal and, in particular, to discontinue the examination of the application, with a record of the information relating to it being placed in the applicant's file.

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[1] OJ C 72, 5.3.2011.

Judgment of the Court (Second Chamber) of 26 April 2012 (references for a preliminary ruling from the Administrativen sad Varna (Bulgaria) — Balkan and Sea Properties ADSITs (C-621/10), Provadinvest OOD (C-129/11) v Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

(Joined Cases C-621/10 and C-129/11) [1]

(VAT — Directive 2006/112/EC — Articles 73 and 80(1) — Sale of immovable property between connected companies — Value of the transaction — National legislation providing that for transactions between connected persons the taxable amount for VAT purposes is the open market value of the transaction)

(2012/C 174/15)

Language of the case: Bulgarian

Referring court

Administrativen sad Varna

Parties to the main proceedings

Applicants: Balkan and Sea Properties ADSITs (C-621/10), Provadinvest OOD (C-129/11)

Defendants: Direktor na Direktsia 'Obzhalvane i upravlenie na izpalnenieto' — Varna pri Tsentralno upravlenie na Natsionalnata agentsia za prihodite

Re:

References for a preliminary ruling — Administrativen sad Varna — Bulgaria — Interpretation of Article 80(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Connected companies concluding a contract for the sale of

immovable property — Provisions of national legislation that for transactions between connected persons the taxable amount for the purposes of VAT is the open market value of the transaction — Methods of determining open market values — Exclusion of the right to deduct VAT where the calculation of tax is unlawful

Operative part of the judgment

1. *Article 80(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the conditions of application it sets out are exhaustive and, consequently, that national legislation cannot on the basis of that provision provide that the taxable amount is to be the open market value of the transaction in cases other than those listed in that provision, in particular where the taxable person has a full right of deduction of value added tax, which is for the national court to ascertain.*

2. *In circumstances such as those of the main proceedings, Article 80(1) of Directive 2006/112 confers on the companies concerned the right to rely on it directly to oppose the application of provisions of national legislation that are incompatible with that provision. If it is not possible to interpret the national legislation in conformity with Article 80(1) of the directive, the national court should disapply any provision of that legislation that is contrary to it.*

([1]) OJ C 72, 5.3.2011 OJ C 145, 14.5.2011

Judgment of the Court (Third Chamber) of 3 May 2012 — Kingdom of Spain v European Commission

(Case C-24/11 P) ([1])

(Appeal — EAGGF — 'Guarantee' section — Expenditure excluded from Community financing — Expenditure incurred by the Kingdom of Spain — Aid for the production of olive oil)

(2012/C 174/16)

Language of the case: Spanish

Parties

Appellant: Kingdom of Spain (represented by: M. Muñoz Pérez, Agent)

Other party to the proceedings: European Commission (represented by: F. Jimeno Fernández, Agent)

Re:

Appeal to have set aside the judgment of the General Court of the European Union of 12 November 2010 in Case T-113/08 *Spain* v *Commission*, by which the General Court dismissed its action seeking partial annulment of Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (OJ 2008 L 18, p. 12), inasmuch as it relates to certain expenditure incurred by the Kingdom of Spain in the olive oil and arable crop sectors.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 12 November 2010 in Case T-113/08 Spain v Commission in so far as, by holding that the Commission's letter AGR 16844 of 11 July 2002 was a communication within the terms of Article 8(1) of Commission Regulation (EC) No 1663/95 of 7 July 1995 laying down detailed rules for the application of Regulation (EEC) No 729/70 regarding the procedure for the clearance of the accounts of the EAGGF Guarantee Section, as amended by Commission Regulation (EC) No 2245/1999 of 22 October 1999, the General Court found that the date of notification of that letter was the reference point for the start of the 24-month period laid down in the fifth point of Article 5(2)(c) of Regulation (EEC) No 729/70 of the Council of 21 April 1970 on the financing of the common agricultural policy, as amended by Council Regulation (EC) No 1287/95 of 22 May 1995, and the fifth subparagraph of Article 7(4) of Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy, for the purposes of the financial correction applied in Commission Decision 2008/68/EC of 20 December 2007 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) in the olive oil sector by reason of the fact that the proposals of the olive oil agency following the checks carried out at the mills had been inadequately monitored by the Spanish authorities;*

2. *Annuls Decision 2008/68 in so far as it excludes from Community financing the expenditure incurred by the Kingdom of Spain in the olive oil sector outside the 24-month period which preceded the date of notification of the Commission's letter of 24 November 2004, arranging the bilateral meeting of 21 December 2004, inasmuch as that expenditure is affected by the correction applied by reason of the fact that the proposals of the olive oil agency following the checks carried out at the mills were inadequately monitored by the Spanish authorities;*

3. *Orders the Kingdom of Spain and the European Commission to bear their own respective costs incurred both at first instance and in the present appeal.*

([1]) OJ C 95, 26.3.2011.

Judgment of the Court (Eighth Chamber) of 26 April 2012 (reference for a preliminary ruling from the Upper Tribunal (Tax and Chancery Chamber) (United Kingdom)) — The Commissioners for Her Majesty's Revenue and Customs v Able UK Ltd

(Case C-225/11) [1]

(VAT — Directive 2006/112 — Exemptions — Article 151(1)(c) — Supply of services of dismantling obsolete US Navy ships in the territory of a Member State)

(2012/C 174/17)

Language of the case: English

Referring court

Upper Tribunal (Tax and Chancery Chamber)

Parties to the main proceedings

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

Defendant: Able UK Ltd

Re:

Reference for a preliminary ruling — Upper Tribunal (Tax and Chancery Chamber) (United Kingdom) — Interpretation of Article 151(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Exemptions relating to certain transactions treated as exports — Dismantling of obsolete US Navy ships carried out on the territory of a Member State

Operative part of the judgment

Article 151(1)(c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that a supply of services such as that at issue in the main proceedings, made in a Member State party to the North Atlantic Treaty and consisting in dismantling obsolete ships of the Navy of another State party to that treaty, is exempt from VAT under that provision only where

— *those services are supplied for staff of the armed forces of that other State taking part in the common defence effort or for the civilian staff accompanying them, and*

— *those services are supplied for members of the armed forces who are stationed in or visiting the Member State concerned or for the civilian staff accompanying them.*

[1] OJ C 211, 16.7.2011

Judgment of the Court (Third Chamber) of 3 May 2012 — Legris Industries SA v European Commission

(Case C-289/11 P) [1]

(Appeal — Competition — Cartels — Copper fittings and Copper alloy fittings Sector — Commission decision finding an infringement of Article 81 EC — Fines — Parent companies and subsidiaries — Whether unlawful conduct attributable)

(2012/C 174/18)

Language of the case: French

Parties

Appellant: Legris Industries SA (represented by: A. Wachsmann and S. Thibault-Liger, avocates)

Other party to the proceedings: European Commission (represented by: C. Giolito, acting as Agent)

Re:

Appeal brought against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-376/06 *Legris Industries* v *Commission*, by which the Court dismissed the action for partial annulment of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/F-1/38.121 — Fittings) — Copper Fittings and Copper Alloy Fittings Sector — Infringement of the right of access to an independent and impartial tribunal — Whether unlawful conduct attributable — Infringement of the principles of equal treatment, personal liability and the principle that the penalty must be specific to the offender — Distortion of evidence

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Legris Industries SA to pay the costs.*

[1] OJ C 252, 27.8.2011.

Judgment of the Court (Third Chamber) of 3 May 2012 — Comap SA v European Commission

(Case C-290/11 P) [1]

(Appeal — Competition — Agreements, decisions and concerted practices — Copper and copper alloy fittings sector — Commission decision finding an infringement of Article 81 EC — Fines — Duration of the infringement — Concept of 'continuity')

(2012/C 174/19)

Language of the case: French

Parties

Appellant: Comap SA (represented by: A. Wachsmann and S. de Guigné, lawyers)

Other party to the proceedings: European Commission (represented by: C. Giolito, agent)

Re:

Appeal lodged against the judgment of the General Court (Eighth Chamber) of 24 March 2011 in Case T-377/06 *Comap* v *Commission*, by which the General Court dismissed the action for annulment in part of Commission Decision C(2006) 4180 final of 20 September 2006 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/F 1/38.121 — FITTINGS) — Copper and copper alloy fittings sector — Infringement of the right to an independent and impartial tribunal — Infringement of the principle of strict interpretation of criminal law — Notion of 'public distancing' — Distortion of evidence — Failure to state reasons

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Comap SA to pay the costs.*

([1]) OJ C 252, 27.8.2011.

Judgment of the Court (Second Chamber) of 10 April 2012 (Reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Criminal proceedings against Minh Khoa Vo

(Case C-83/12 PPU) ([1])

(Area of freedom, security and justice — Regulation (EC) No 810/2009 — Community Code on Visas — Articles 21 and 34 — National legislation — Third country nationals brought illegally into the territory of a Member State — Visas obtained by fraud — Criminal penalties imposed on the human smuggler)

(2012/C 174/20)

Language of the case: German

Referring court

Bundesgerichtshof

Party in the main proceedings

Minh Khoa Vo

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Articles 21 and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (OJ 2009 L 243, p. 1) — National legislation imposing criminal penalties on persons who smuggle foreign nationals into national territory — Applicability of penalties when the foreign nationals concerned are in possession of a visa obtained by false pretences from a competent authority of another Member State but which has not yet been annulled pursuant to that regulation

Operative part of the judgment

Articles 21 and 34 of Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) are to be interpreted as meaning that they do not preclude national provisions under which assisting illegal immigration constitutes an offence subject to criminal penalties in cases where the persons smuggled, third country nationals, hold visas which they obtained fraudulently by deceiving the competent authorities of the Member State of issue as to the true purpose of their journey, without prior annulment of those visas.

([1]) OJ C 126, 28.4.2012.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 6 March 2012 — Josef Probst v mr.nexnet GmbH

(Case C-119/12)

(2012/C 174/21)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Josef Probst

Respondent in the appeal on a point of law: mr.nexnet GmbH

Question referred

Does Article 6(2) and (5) of Directive 2002/58/EC ([1]) permit the passing of traffic data from the service provider to the assignee of a claim for payment in respect of telecommunications services in the case where the assignment effected with a view to the collection of transferred debts includes, in addition to the general obligation to respect the privacy of telecommunications and to ensure data protection as provided for under the applicable legislation, the following contractual stipulations:

the service provider and the assignee undertake to process and use the protected data only within the framework of their cooperation and exclusively for the purpose of the contract and in the manner prescribed therein;

as soon as the information in the protected data is no longer required for such purpose, all protected data held in that connection are to be irreversibly erased or returned;

each contracting party is entitled to check that the other party has ensured data protection and data security in accordance with this agreement;

confidential documents and information transferred may be made accessible only to such employees as require these for the purposes of performing the contract;

the contracting parties are to require those employees to maintain confidentiality in accordance with this agreement;

on request, or at the latest on termination of the cooperation between the contracting parties, all confidential data held in that connection are to be irreversibly erased or returned to the other party?

([1]) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ 2002 L 201, p. 37).

Reference for a preliminary ruling from the Juzgado de lo Mercantil No 1 de Granada (Spain) lodged on 8 March 2012 — Promociones y Construcciones BJ 200, S.L. and Others

(Case C-125/12)

(2012/C 174/22)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil No 1 de Granada

Parties to the main proceedings

Promociones y Construcciones BJ 200, S.L., Ignacio Alba Muñoz, administrator of the insolvency of Promociones y Construcciones BJ 200 S.L., and Agencia Estatal de Administración Tributaria (State tax administration)

Questions referred

1. Must Article 199(1)(g) of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax, providing as it does that '*1. Member States may provide that the person liable for payment of VAT is the taxable person to whom any of the following supplies are made: … (g) the supply of immovable property sold by a judgment debtor in a compulsory sale procedure*', be interpreted, in court proceedings that are creditor proceedings initiated by a declaration as to the insolvency of that debtor, to the effect that it refers only to transfers which strictly reflect the fact that the proceedings are liquidation proceedings or that they have reached the phase of liquidation, with the result that the disposal of such immovable property must take place as a consequence of the liquidation of all the debtor's assets, or, given that insolvency proceedings may end, among other possibilities, with the liquidation of the insolvent undertaking, does it also cover any transfers of immovable property carried out in the course of insolvency proceedings by a debtor declared insolvent?

2. Must Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax be interpreted to the effect that the 'compulsory sale procedure' to which it refers includes a collective judicial insolvency procedure in which there has been a voluntary sale, unconnected with any phase of compulsory liquidation of the debtor's assets and for reasons merely of timeliness, of any one or more of its assets; or, on the contrary, does it refer only to sales ordered in enforcement proceedings intended to liquidate the assets of the judgment debtor?

3. In the latter case, if Article 199(1)(g) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax refers strictly to sales in enforcement proceedings intended to liquidate the assets of a judgment debtor, may that provision be interpreted as excluding reversal of the position regarding the taxable person for VAT purposes in any case where immovable property is transferred by a debtor declared insolvent because such transfer is timely and conducive to the interests of the insolvency and the transfer is unconnected with any procedure for liquidation of all the debtor's assets, with the result that it is necessary to disapply a national law which has extended the material scope of Article 199(1)(g) of Directive 2006/112 to cases which that provision does not contemplate?

([1]) OJ L 347, p. 1.

Reference for a preliminary ruling from the Finanzgericht des Landes Sachsen-Anhalt (Germany) lodged on 8 March 2012 — Magdeburger Mühlenwerke GmbH v Finanzamt Magdeburg

(Case C-129/12)

(2012/C 174/23)

Language of the case: German

Referring court

Finanzgericht des Landes Sachsen-Anhalt

Parties to the main proceedings

Applicant: Magdeburger Mühlenwerke GmbH

Defendant: Finanzamt Magdeburg

Question referred

Did Commission Decision C(1998) 1712 of 20 May 1998 ([1]) grant the German legislature discretion in relation to the formulation of point 4 of the second sentence of Paragraph 2 of the Investitionszulagengesetz ('InvZulG 1996') (Law on investment

grants of 1996) in the version of the Steuerentlastungsgesetz 1999 (Law on tax relief of 1999) of 19 December 1998, whereby a scheme would be covered by that discretion if it promotes investments under that scheme, in relation to which the binding investment decision was made before the expiration of the period for the implementation of the Commission Decision or before the publication of the intended measures in the Bundessteuerblatt (Federal Tax Journal, 'BStBl'), but the delivery of the capital asset and the determination and disbursement of the grant take place afterwards?

(1) 1999/183/EC: Commission Decision of 20 May 1998 concerning State aid for the processing and marketing of German agricultural products which might be granted on the basis of existing regional aid schemes (OJ 1999 L 60, p. 61).

Reference for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 19 March 2012 — Caixa d'Estalvis i Pensions de Barcelona v Generalidad de Cataluña

(Case C-139/12)

(2012/C 174/24)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Caixa d'Estalvis i Pensions de Barcelona

Defendant: Generalidad de Cataluña

Questions referred

1. Is it a requirement of Article 13B(d)(5) of Council Directive 77/388/EEC (1) of 17 May 1977 (now Council Directive 2006/112/EC of 28 November 2006) that transactions by a taxable person involving the sale of shares which amount to acquiring title to immovable property be subject to VAT and not be exempt, in view of the exception made in respect of securities giving the holder thereof *de jure* or *de facto* rights of ownership or possession over immovable property or part thereof?

2. Does Council Directive 77/388/EEC of 17 May 1977 permit a provision such as Article 108 of Spanish Law 24/1988 on the Stock Market, which provides that the acquisition of the majority of the capital of a company whose assets essentially comprise immovable property is liable to an indirect tax other than VAT, namely capital transfer duty, without regard to the possibility that the parties to the transaction may be acting in a business capacity, bearing in mind that had the immovable property been transferred directly, instead of transferring the shares or interests, the transaction would have been subject to VAT?

3. Is it compatible with the freedom of establishment under Article [43] EC (now Article 49 TFEU) and with the free movement of capital under Article 56 EC (now Article 63 TFEU) for a provision of national law such as Article 108 of the Spanish Law on the Stock Market of 28 July 1988, as amended by the 12th additional provision of Law 18/1991, to provide that duty is chargeable on the acquisition of the majority of the capital of companies whose assets essentially comprise immovable property situated in Spain, without offering the possibility of demonstrating that the company over which control is obtained is economically active?

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

Action brought on 29 March 2012 — European Commission v Kingdom of Spain

(Case C-151/12)

(2012/C 174/25)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: G. Valero Jordana and B. Simon, Agents)

Defendant: Kingdom of Spain

Form of order sought

— Declare that, with regard to its intracommunal river basins, the Kingdom of Spain has failed to fulfil its obligations under Articles 4(8), 7(2) and 10(1) and (2), and Sections 1.3 and 1.4 of Annex V, of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy; (1)

— Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The Commission submits that the Kingdom of Spain has incorrectly transposed the provisions of Directive 2000/60/EC referred to in the form of order set out in the application, inasmuch as the Spanish legislation applies only to intercommunal river basins in Spain [whose waters flow through more than one Autonomous Community]. Consequently, those provisions have not been transposed into Spanish law as regards intracommunal river basins (whose waters flow through only one Autonomous Community).

(1) OJ 2000 L 327, p. 1.

Action brought on 29 March 2012 — European Commission v Republic of Bulgaria

(Case C-152/12)

(2012/C 174/26)

Language of the case: Bulgarian

Parties

Applicant: European Commission (represented by: R. Vasileva and H. Støvlbæk, acting as Agents)

Defendant: Republic of Bulgaria

Form of order sought

— Declare that the ***Republic of Bulgaria*** has infringed its obligations under Articles 7(3) and 8(1) of Directive 2001/14/EC; ([1])

— Order the ***Republic of Bulgaria*** to pay the costs.

Pleas in law and main arguments

By its application of 16 March 2012 the European Commission ('the Commission') seeks to obtain a declaration that the Republic of Bulgaria has failed to fulfil its obligations under Articles 7(3) and 8(1) of Directive 2001/14/EC by not basing the charging scheme of the infrastructure manager in Bulgaria on the costs directly incurred as a result of operating the train service, in accordance with Article 7(3) of Directive 2001/14/EC. Also, Bulgaria has not provided information that it based the charges on a scheme which aims at full recovery of the costs, in accordance with Article 8(1) of that directive. For that reason Bulgaria should in any case have complied with the conditions set out in that article.

The Commission relies on the following essential arguments:

1. By the expression 'cost that is directly incurred as a result of operating the train service' are to be understood marginal costs incurred directly as a result of the actual use of the railway infrastructure, that is 'direct costs' which arose from a specific train service operation. Accordingly, those are variable costs and dependent on whether the railway infrastructure is used or not. Following that logic, costs arising independently of the actual use of the railway infrastructure could not be regarded as direct costs, even if they concern activities or goods necessary for operating rail traffic on certain routes. Those costs are fixed costs in the sense that they are also incurred when the railway infrastructure is not used.

2. That interpretation is supported by the wording of Article 7(3) which applies to the cost '… that is *directly* incurred as a result of *operating the train service*'. Fixed costs, which are linked to the whole railway infrastructure would not therefore be incurred 'directly' as a result of a specific train service operation. The expression 'incurred directly' therefore applies to additional costs arising from a specific train service operation. The suggested interpretation is also based on the schematic context of Article 7(3). Article 7 governs the principles of charging whereas Article 8 addresses the possible exceptions to those principles. Article 8(1) refers to 'full recovery of the costs incurred by the infrastructure manager' which means that the cost referred to by Article 7(3) cannot be the infrastructure manager's final costs but must refer to the costs incurred as a result of a specific train service operation, that is to say, lower costs than the final costs. That interpretation is supported by recital 7 in the preamble to Directive 2001/14/EC which encourages optimal use of the railway infrastructure by as many transport undertakings as possible, requiring charges to be kept low.

3. The Commission is of the opinion that the infrastructure manager is to make the infrastructure available to railway undertakings at its own cost, those undertakings having to pay charges equivalent to the direct costs. That can be explained by the need to make the railway infrastructure more attractive for use by a large number of railway undertakings and to increase its optimal use by each one of them. It is possible to apply Article 8(1) of Directive 2001/14/EC only when the conditions laid down in that article are fulfilled: for all market segments, in respect of which the infrastructure manager wishes to levy mark-ups, it must establish whether they could bear such mark-ups. That interpretation follows from the wording of the first subparagraph of Article 8(1), in particular from the formulation 'if the market can bear this …', and from the wording of the second subparagraph of Article 8(1) which reads: 'The level of charges must not, however, exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, ….'

4. The complete analysis of the costs and income of the Bulgarian infrastructure manager for the years 2005-2008 shows that 60 % to 70 % of the direct operating costs budgeted for in Bulgaria were based on fixed elements, in particular employment charges and social security payments. In accordance with the foregoing, the Commission comes to the conclusion that those costs cannot be regarded as direct cost within the meaning of Article 7(3), because they did not vary according to use of the train service. Thus the income from the infrastructure charges greatly exceeds the general direct operating costs. The Commission therefore concludes that the charges in Bulgaria were not only framed on the basis of costs incurred directly as a result of operating the train service.

5. On the basis of the information received, the Commission finds that the method used in Bulgaria for levying charges for the use of the railway infrastructure is not clearly in accordance with the concept of direct cost within the meaning of Article 7(3) of Directive 2001/14/EC.

(1) Directive 2001/14/EC of the European Parliament and of the Council of 26 February 2001 on the allocation of railway infrastructure capacity and the levying of charges for the use of railway infrastructure and safety certification (OJ 2001 L 75, p. 1).

Reference for a preliminary ruling from the Tribunal de première instance de Bruxelles (Belgium) lodged on 29 March 2012 — Isera & Scaldis Sugar SA, Philippe Bedoret and Co SPRL, Jean Rigot, Mathieu Vrancken v Bureau d'intervention et de restitution belge (BIRB)

(Case C-154/12)

(2012/C 174/27)

Language of the case: French

Referring court

Tribunal de première instance de Bruxelles

Parties to the main proceedings

Applicants: Isera & Scaldis Sugar SA, Philippe Bedoret and Co SPRL, Jean Rigot, Mathieu Vrancken

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

Questions referred

Is Article 16 of Council Regulation (EC) No 318/2006 of 20 February 2006 on the common organisation of the markets in the sugar sector, (1) now Article 51 of Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, (2) in imposing on the sugar-beet sector a charge of EUR 12 per tonne of the quota sugar, invalid:

— inasmuch as the legal basis used by the legislature for the introduction of this provision is former Article 37(2)(3) EC, now Article 43(2) TFEU;

— inasmuch as the legislature, which justified the charge as a measure intended to finance the expenditure of the common organisation of the market in sugar even though it actually funds direct aid and/or is intended to preserve the budget neutrality of the '2006 sugar reform', did not clearly and unequivocally set out the reasons for the introduction of the charge as is required by Article 296 TFEU (former Article 253 EC);

— inasmuch as the 'sugar-beet' industry is the only sector on which such a charge contributing to the general budget of the European Union has been imposed, the charge should be considered as discriminatory both between growers having maintained beet production and those having ceased beet production and between the 'sugar-beet' industry and any other agricultural or non-agricultural sector;

— inasmuch as the charge should be considered as breaching the principle of proportionality in being neither appropriate nor necessary to finance the expenditure of the common organisation of the market in sugar, nor proportionate in relation to the real expenditure and the prospective future expenditure of the common organisation of the market in sugar?

(1) OJ 2006 L 58, p. 1.
(2) OJ 2007 L 299, p. 1.

Action brought on 30 March 2012 — European Commission v Ireland

(Case C-158/12)

(2012/C 174/28)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Petrova, K. Mifsud-Bonnici, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by not issuing permits in accordance with Articles 6 and 8 or Directive 2008/1/EC (1) or, as appropriate, by not reconsidering and, where necessary, by not updating permit conditions, in respect of 13 existing pig rearing installations and poultry rearing installations in Ireland, and thereby by failing to ensure that those existing installations operate in accordance with Articles, 3, 7, 9, 10 and 13, Article 14(a) and (b) and Article 15(2) of the IPPC Directive by not later than 30 October 2007, Ireland has failed to fulfil its obligation pursuant to Article 5(1) of the IPCC Directive.

— order Ireland to pay the costs.

Pleas in law and main arguments

Pursuant to Article 5(1) of the IPPC Directive, Member States were obliged to ensure that their competent authorities either issue permits in accordance with Articles 6 and 8 or, as appropriate, reconsider and, where necessary, update the existing permit conditions by not later than 30 October 2007.

From the information available the Commission concludes that existing pig rearing installations and poultry rearing installation in Ireland are still operation without any IPPC permit and the Commission therefore concludes that Ireland is in breach of its obligations under Article 5(1) of the Directive.

(1) Directive 2008/1/EC of the European Parliament and of the Council of 15 January 2008 concerning integrated pollution prevention and control
OJ L 24, p. 8.

Reference for a preliminary ruling from the Cour de cassation (France) lodged on 11 April 2012 — Peter Pinckney v KDG mediatech AG

(Case C-170/12)

(2012/C 174/29)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: Peter Pinckney

Defendant: KDG mediatech AG

Questions referred

1. Is Article 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (1) to be interpreted as meaning that, in the event of an alleged infringement of copyright committed by means of content placed online on a website,

   — the person who considers that his rights have been infringed has the option of bringing an action to establish liability before the courts of each Member State in the territory of which content placed online is or has been accessible, in order to obtain compensation solely in respect of the damage suffered on the territory of the Member State before which the action is brought,

   or

   — does that content also have to be, or to have been, directed at the public located in the territory of that Member State, or must some other clear connecting factor be present?

2. Is the answer to Question 1 the same if the alleged infringement of copyright results, not from the placing of dematerialised content online, but, as in the present case, from the online sale of a material carrier medium which reproduces that content?

(1) OJ 2001 L 12, p. 1

Appeal brought on 11 April 2012 by Carrols Corp. against the judgment of the General Court (Eighth Chamber) delivered on 1 February 2012 in Case T-291/09 Carrols Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Mr Giulio Gambettola

(Case C-171/12 P)

(2012/C 174/30)

Language of the case: Spanish

Parties

Appellant: Carrols Corp. (represented by: I. Temiño Ceniceros, lawyer)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Mr Giulio Gambettola

Form of order sought

— Set aside in its entirety the judgment of the General Court of 1 February 2012 in Case T-291/09;

— uphold in their entirety the claims put forward by Carrols Corp. at first instance.

Pleas in law and main arguments

Infringement of European Union law by the General Court, as a result of breach of Article 52(1)(b) of Regulation No 207/2009 (1) and the case-law interpreting it.

In the judgment under appeal, the General Court concluded that 'the fact that the signs at issue are identical does not establish bad faith on the part of the intervener, where there are no other relevant factors'.

Case C-529/07 *Chocoladefabriken Lindt & Sprüngli* [2009] ECR I-4893 makes clear that '[w]hether the applicant is acting in bad faith … must be the subject of an overall assessment, taking into account all the factors relevant to the particular case' (paragraph 37 of the judgment). However, Carrols Corp. submits that the General Court erred by assessing each of the facts individually and in isolation, precluding an overall view being taken and unreasonably increasing the burden of proof on Carrols Corp., thereby prejudicing its right to an effective remedy.

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

Reference for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 18 April 2012 — Yvon Welte v Finanzamt Velbert

(Case C-181/12)

(2012/C 174/31)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Yvon Welte

Defendant: Finanzamt Velbert

Question referred

Are Articles 56 and 58 of the Treaty establishing the European Community to be interpreted as precluding national legislation of a Member State on the charging of inheritance tax which, where land situated within the country is acquired through inheritance by a non-resident person, provides for a tax-free amount of only EUR 2 000 for the non-resident acquirer, whereas on the acquisition through inheritance a tax-free amount of EUR 500 000 would apply if at the time of the inheritance the deceased person or acquirer had a permanent residence in the Member State concerned?

GENERAL COURT

Judgment of the General Court of 3 May 2012 — Conceria Kara v OHIM — Dima (KARRA)

(Case T-270/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark KARRA — Earlier national and Community figurative marks Kara — Company name Conceria Kara Srl and trade name Kara — Relative grounds for refusal — First sentence of Article 75 of Regulation (EC) No 207/2009 — Article 42(2) and (3) of Regulation (EC) No 207/2009 — Article 8(1)(b) of Regulation (EC) No 207/2009 — Article 8(4) of Regulation (EC) No 207/2009 — Article 8 of the Paris Convention — Bad faith)

(2012/C 174/32)

Language of the case: Italian

Parties

Applicant: Conceria Kara Srl (Trezzano sul Naviglio, Italy) (represented by P. Picciolini, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Dima — Gida Tekstil Deri Insaat Maden Turizm Orman Urünleri Sanayi Ve Ticaret Ltd Sti (Istanbul, Turkey)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 29 March 2010 (Case R 1172/2009-2) relating to opposition proceedings between Conceria Kara Srl and Dima — Gida Tekstil Deri Insaat Maden Turizm Orman Urünleri Sanayi Ve Ticaret Ltd Sti.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Conceria Kara Srl to pay the costs.*

[1] OJ C 221, 14.8.2010.

Judgment of the General Court of 2 May 2012 — Universal Display Corp. v OHIM

(Case T-435/11) [1]

(Community trade mark — International registration designating the European Community — Application for Community word mark UniversalPHOLED — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009)

(2012/C 174/33)

Language of the case: English

Parties

Applicant: Universal Display Corp. (Ewing, New Jersey, United States) (represented by: A. Poulter and C. Lehr, Solicitors)

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

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 18 May 2011 (Case R 215/2011-2) concerning an application for registration of the word sign UniversalPHOLED as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Universal Display Corp. to pay the costs.*

[1] OJ C 298, 8.10.2011.

Order of the General Court of 16 April 2012 — de Brito Sequeira Carvalho v Commission

(Joined Cases T-40/07 P-REV and T-62/07 P-REV) [1]

(Procedure — Application for revision — New fact — Absence thereof — Inadmissibility)

(2012/C 174/34)

Language of the case: French

Parties

Appellant: Jose António de Brito Sequeira Carvalho (Brussels, Belgium) (represented by: M. Boury, lawyer)

Other party to the proceedings: European Commission (represented by: J. Currall and D. Martin, agents)

Re:

Application for revision of the judgment of the General Court of 5 October 2009 in Joined Cases T-40/07 P and T-62/07 P *de Brito Sequeira Carvalho* v *Commission of the European Communities* and *Commission of the European Communities* v *de Brito Sequeira Carvalho*, not yet reported in the ECR.

Operative part of the order

1. *The application for revision is dismissed as inadmissible.*

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

([1]) OJ C 82, 14.4.2007.

Order of the General Court of 24 April 2012 — El Fatmi v Council

(Joined Cases T-76/07, T-362/07 and T-409/08) ([1])

(Common foreign and security policy — Restrictive measures with a view to combating terrorism — Withdrawal from the list of persons concerned — Action for annulment — No need to adjudicate)

(2012/C 174/35)

Language of the case: Dutch

Parties

Applicant: Nouriddin El Fatmi (Vught, Netherlands) (represented by G. Pulles and A. M. van Eik (Cases T-76/07, T-362/07 and T-409/08), J. Pauw (Cases T-76/07 and T-362/07) and M. Uiterwaal (T-76/07), lawyers)

Defendant: Council of the European Union (represented initially by G. J. Van Hegelsom and E. Finnegan (T-76/07 and T-362/07), then by B. Driessen and E. Finnegan (T-76/07, T-362/07 and T-409/08), agents)

Interveners in support of the defendant: Kingdom of the Netherlands (represented initially by C. Wissels, M. de Mol and Y. de Vries, and by M. de Grave (Case T-76/07), then by C. Wissels, M. Bulterman and J. Langer, agents); and European Commission (represented by S. Boelaert and P. van Nuffel, and, initially, by J. Aquilina (Case T-76/07), agents

Re:

In essence, application for annulment of Council Decision 2006/1008/EC of 21 December 2006 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2006 L 379, p. 123), replaced successively by Council Decisions 2007/445/EC of 28 June 2007 (OJ 2007 L 169, p. 58), 2007/868/EC of 20 December 2007 (OJ 2007 L 340, p. 100), 2008/583/EC of 15 July 2008 (OJ 2008 L 188, p. 21), 2009/62/EC of 26 January 2009 (OJ 2009 L 23, p. 25), Council Regulation (EC) No 501/2009 of 15 June 2009 (OJ 2009 L 151, p. 14), Council Implementing Regulations (EU) No 1285/2009 of 22 December 2009 (OJ 2009 L 346, p. 39), (EU) No 610/2010 of 12 July 2010 (OJ 2010 L 178, p. 1), (EU) No 83/2011 of 31 January 2011 (OJ 2011 L 28, p. 14), and (EU) No 687/2011 of 18 July 2011 (OJ 2011 L 188, p. 2), in so far as the applicant is named in the list of persons, groups and entities subject to Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (OJ 2001 L 344, p. 1).

Operative part of the order

The General Court orders:

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

2. *The Council of the European Union shall pay the costs.*

3. *The European Commission and the Kingdom of the Netherlands shall bear their own costs.*

([1]) OJ C 117, 26.5.2007.

Order of the General Court of 20 April 2012 — Pachtitis v Commission

(Case T-374/07) ([1])

(Civil service — Recruitment — Open competition — Rejection of an application seeking to obtain a copy of the questions and answers to the admission tests — Lack of competence of the General Court — Referral to the Civil Service Tribunal)

(2012/C 174/36)

Language of the case: Greek

Parties

Applicant: Dimitrios Pachtitis (Athens, Greece) (represented by: initially P. Giatagantzidis and V. Niagkou, then P. Giatagantzidis and S. Stavropoulou, then P. Giatagantzidis and K. Kyriazi, lawyers)

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

Interveners in support of the applicant: Hellenic Republic (represented by: E.-M. Mamouna and K. Boskovits, acting as Agents); Kingdom of Sweden (represented by A. Falk and S. Johannesson, acting as Agents); and European Data Protection Supervisor (EDPS) (represented by: H. Hijmans, acting as Agent)

Re:

Application for annulment, first, of the decision of the European Personnel Selection Office (EPSO) of 27 June 2007, rejecting an application from the applicant seeking to obtain access to the questions which had been put to him in the context of his participation in the open competition EPSO/AD/77/06, to the answers which he had given to those questions and the sheet of correct answers, and, second, of the implied rejection of the confirmatory application which he had made on 10 July 2007 to EPSO.

Operative part of the order

1. *Case T-374/07 is referred back to the European Union Civil Service Tribunal.*

2. *The costs are reserved.*

(1) OJ C 283, 24.11.2007.

Order of the General Court of 24 April 2012 — Alstom v Commission

(Case T-517/09) (1)

(Competition — Market for power transformers — Letter from the Commission's accounting officer — Refusal to accept the provision of a bank guarantee as a means of provisional cover of the fine — Disappearance of interest in bringing proceedings — No need to adjudicate)

(2012/C 174/37)

Language of the case: French

Parties

Applicant: Alstom (Levallois-Perret, France) (represented by: J. Derenne and A. Müller-Rappard, lawyers)

Defendant: European Commission (represented by: A. Bouquet, N. von Lingen and K. Mojzesowicz, agents)

Re:

First, action for annulment of Commission Decision C(2009) 7601 final of 7 October 2009, relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/39.129 — Power Transformers), imposing a fine on the applicant and, second, action for annulment of the letter from the Commission's accounting officer of 10 December 2009 refusing to allow the provision of a bank guarantee as a means of provisional recovery of that fine.

Operative part of the order

1. *It is not necessary to give a ruling on the action for annulment of the letter from the Commission's accounting officer of 10 December 2009 refusing to allow the provision of a bank guarantee as a means of provisional cover of the fine imposed by Commission Decision C(2009) 7601 final of 7 October 2009, relating to a proceeding under Article 81 EC and Article 53 of the EEA Agreement (Case COMP/F/39.129 — Power Transformers).*

2. *The costs are reserved.*

(1) OJ C 51, 27.2.2010.

Order of the General Court of 16 April 2012 — F91 Diddeléng and Others v Commission

(Case T-341/10) (1)

(Action for annulment — Decision to take no further action on a complaint — Failure to bring an action for failure to fulfil obligations — No challengeable act — Inadmissibility)

(2012/C 174/38)

Language of the case: French

Parties

Applicant: F91 Diddeléng (Dudelange, Luxembourg); Julien Bonnetaud (Yutz, France); Thomas Gruszczynski (Amnéville, France); Rainer Hauck (Maxdorf, Germany); Stéphane Martine (Esch-sur-Alzette, Luxembourg); Grégory Molnar (Moyeuvre-Grande, France); and Yann Thibout (Algrange, France) (represented by L. Misson, C. Delrée and G. Ernes, lawyers)

Defendant: European Commission (represented by G. Rozet and P. Van Nuffel, agents

Intervener in support of the defendant: Fédération Luxembourgeoise de Football (FLF) (Mondercange, Luxembourg) (represented initially by K. Daly, solicitor, and D. Keane, SC, then by K. Daly)

Re:

Application for annulment of the Commission's decision of 31 June 2010 to take no action in regard to the complaint lodged by the applicants against the Fédération Luxembourgeoise de Football (FLF), seeking annulment of rules of the FLF infringing Articles 39 and 81 EC, and an application for any appropriate order.

Operative part of the order

The General Court orders:

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

2. *F91 Diddeléng, Julien Bonnetaud, Thomas Gruszczynski, Rainer Hauck, Stéphane Martine, Grégory Molnar and Yann Thibout shall bear their own costs and pay those of the European Commission.*

3. *The Fédération luxembourgeoise de football (FLF) shall bear its own costs.*

(1) OJ C 301, 6.11.2010.

Order of the President of the General Court of 23 April 2012 — Hassan v Council

(Case T-572/11 RII)

(Interim relief — Common foreign and security policy — Restrictive measures against Syria — Freezing of funds and economic resources — Application for interim relief — Fresh application — Absence of new facts — Inadmissibility)

(2012/C 174/39)

Language of the case: French

Parties

Applicant: Samir Hassan (Damas, Syria) (represented by: É. Morgan de Rivery and E. Lagathu, lawyers)

Defendant: Council of the European Union (represented by: S. Kyriakopoulou and M. Vitsentzatos, acting as Agents)

Re:

Application for interim relief, in particular an application for suspension of operation of the restrictive measures instituted by the Council against Syria, in so far as those measures affect the applicant.

Operative part of the order

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

2. *Costs are reserved.*

Order of the President of the General Court of 23 April 2012 — Ternavsky v Council

(Case T-163/12 R)

(Applications for interim measures — Common foreign and security policy — Restrictive measures against Belarus — Freezing of funds and economic resources — Application for suspension of operation of a measure — Disregard of the formal requirements — Inadmissibility)

(2012/C 174/40)

Language of the case: French

Parties

Applicant: Anatoly Ternavsky (Moscow, Russia) (represented by: C. Rapin and E. Van den Haute, lawyers)

Defendant: Council of the European Union

Re:

Application for suspension of the application of point 2 of Annex II to Council Implementing Decision 2012/171/CFSP of 23 March 2012 implementing Decision 2010/639/CFSP concerning restrictive measures against Belarus (OJ 2012 L 87, p. 95) and of point 2 of Annex II to Council Implementing Regulation (EU) No 265/2012 of 23 March 2012 implementing Article 8a(1) of Regulation (EC) No 765/2006 concerning restrictive measures in respect of Belarus (OJ 2012 L 87, p. 37)

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 2 March 2012 — France v Commission

(Case T-135/12)

(2012/C 174/41)

Language of the case: French

Parties

Applicant: French Republic (represented by: E. Belliard, G. de Bergues, J. Gstalter and J. Rossi, Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

By its application, the applicant seeks the annulment of Commission Decision C(2011) 9403 final of 20 December 2011 declaring compatible with the internal market, under certain conditions, the aid implemented by the French Republic in favour of France Télécom concerning the reform of the method of financing the pensions of public-service employees working for France Télécom (State aid No C 25/2008 (ex NN 23/2008)).

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

1. First plea in law, divided in two parts, alleging breach of Article 107(1) TFEU in that the Commission considered that the reform of the method of financing the pensions of public-service employees working for France Télécom amounted to State aid. The applicant submits that:

   — the Commission was wrong to take the view that the reduction in the contribution to be paid to the State by France Télécom does not free the latter from the structural disadvantage suffered by it following the entry into force of the 1990 Law and that the measure confers an advantage on that company;

   — in the alternative, the Commission was wrong to take the view that France Télécom benefited from an advantage as from 1996 despite the payment of an exceptional flat-rate contribution by that company.

2. Second plea in law, alleging, in the alternative, breach of Article 107(3)(c) TFEU in that the Commission made the compatibility of the measure in question conditional upon the requirement laid down in Article 2 of the contested decision being satisfied. The second plea is divided into two parts.

   — By the first part of the plea, the applicant submits that the Commission infringed Article 107(3)(c) TFEU when it took the view that the competitively fair rate had not been attained in the present case because non-common risks had not been taken into account in calculating the contribution paid by France Télécom following the entry into force of the 1996 Law.

   — By the second part of the plea, the applicant submits, in the alternative, that the Commission infringed Article 107(3)(c) TFEU when it refused to assess the inadequacy of the competitively fair rate in the light of the payment of an exceptional flat-rate contribution by France Télécom and when it concluded that that company had not been placed in a completely equivalent position to that of its competitors until 2043.

3. Third plea in law, alleging a manifest error of assessment in that the Commission refused to accept a rate of 7 % as the discount rate for the exceptional flat-rate contribution.

Action brought on 12 April 2012 — Deutsche Börse v Commission

(Case T-175/12)

(2012/C 174/42)

Language of the case: English

Parties

Applicant: Deutsche Börse AG (Frankfurt am Main, Germany) (represented by: C. Zschocke, J. Beninca and T. Schwarze, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission Decision COMP/M.6166 Deutsche Börse/NYSE Euronext of 1 February 2012; and

— Order the defendant to pay the costs of this application.

Pleas in law and main arguments

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

1. First plea in law, alleging that the defendant failed to properly assess the horizontal competitive constraints to which the parties are subject to, alleging that the Commission's consideration of over-the-counter ('OTC') derivatives trading and its claim that the constraints the parties supposedly exercise on each other's exchange fees was vitiated by errors of law and assessment. In addition, the Commission's claim that the parties constrain each other through innovation competition is manifestly incorrect and its analysis of competition among trading platforms was not based on cogent and consistent evidence. Furthermore, the Commission failed to properly consider the demand-side constraints because it failed to analyze and assess the crucial role of the parties' customers among which are the main participants of OTC trading, and to carry out any quantitative analysis.

2. Second plea in law, alleging that the defendant's assessment of the parties' efficiencies claims was vitiated by manifest errors and not supported by cogent and consistent evidence. The Commission inaccurately accepted only some of the efficiencies as verifiable, merger-specific and likely to directly benefit customers, and incorrectly claimed that they were insufficient to counteract the competitive effects of the merger. In relation to its evaluation of both collateral savings and liquidity benefits, the Commission violated the parties' right to be heard by relying on evidence and arguments introduced after the oral hearing on which the parties were not given opportunity to comment. The Commission's 'claw back' theory and its assessment of the merger-specificity of collateral savings were based on new theories and requirements that are not supported by the Commission's Horizontal Merger Guidelines ([1]).

3. Third plea in law, alleging that the defendant failed to properly assess the remedies offered by the parties. The rejection of the commitment concerning the full divestiture of NYX' (the applicant and NYSE Euronext) overlapping single equity derivatives business, including the divestiture of NYX' BClear facility, was based on incorrect evidence. The alleged 'symbiotic relationship' between single equity and equity index derivatives does not exist, contradicts the Commission's own market definition analysis, and was raised in violation of the parties' right of defence. The Commission's rejection of the software licensing commitment is vitiated by error and contradicts its conclusions regarding technology competition.

([1]) Guidelines on the assessment of horizontal mergers under the Council Regulation on the control of concentrations between undertakings (OJ 2004 C 31, p. 5)

Action brought on 16 April 2012 — Bank Tejarat v Council

(Case T-176/12)

(2012/C 174/43)

Language of the case: English

Parties

Applicant: Bank Tejarat (Tehran, Iran) (represented by: S. Zaiwalla, P. Reddy, and F. Zaiwalla, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran (OJ L 19, p. 22), insofar as it relates to the applicant;

— Annul paragraph 2 of table I.B. of Annex I to Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (OJ L 19, p. 1), insofar as it relates to the applicant;

— Annul paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 (OJ L 88, p. 1), insofar as it relates to the applicant;

— Declare Article 20(1) of Council Decision 2010/413/CFSP inapplicable to the applicant;

— Declare Article 23(2) of Council Regulation (EU) No 267/2012 inapplicable to the applicant;

— Declare that the annulment of paragraph 2 of table I.B. of Annex I to Council Decision 2012/35/CFSP and Council Implementing Regulation (EU) No 54/2012 and paragraph 105 of table B of Annex IX to Council Regulation (EU) No 267/2012 has immediate effects; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging

   — that the substantive criteria for designation under the contested measures are not met in the applicant's case and there is no legal or factual basis for its designation; and/or that the Council committed a manifest error of assessment in determining whether or not the criteria had been met; and

   — that the Council designated the applicant on the basis of insufficient evidence to establish that the criteria had been met and thereby committed a (further) manifest error of assessment, since the applicant does not satisfy any of the five criteria for designation provided for in Article 23(2) of Regulation No 267/2012; and that the Council has provided no evidence as to the contrary.

2. Second plea in law, alleging

   — that the designation of the applicant is in violation of its fundamental rights and freedoms, including its right to trade and carry out its business activities and to peaceful enjoyment of its possessions and/or is in violation of the principle of proportionality.

3. Third plea in law, alleging

   — that the Council has in any event breached the procedural requirements: (a) to notify the applicant individually of its designation, (b) to give adequate and sufficient reasons and (c) to respect the rights of defence and the right to effective judicial remedies.

Action brought on 20 April 2012 — Spraylat v ECHA

(Case T-177/12)

(2012/C 174/44)

Language of the case: German

Parties

Applicant: Spraylat GmbH (Aachen, Germany) (represented by: K. Fischer, lawyer)

Defendant: European Chemicals Agency (ECHA)

Form of order sought

The applicant claims that the Court should:

— annul the administrative charge made known to it by the defendant on 21 February 2012 (invoice No 10030371);

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

As a precautionary claim, the applicant seeks the annulment of Decision SME(2012)1445 of 15 February 2012.

Pleas in law and main arguments

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

1. First plea in law: infringement of Regulation (EC) No 1907/2006 ([1]) and of Regulation (EC) No 340/2008 ([2])

   The applicant submits that, as evidenced by both of the regulations, the sole permissible ground for the levying of an administrative charge under Article 13(4) of Regulation No 340/2008 is to cover the costs incurred by the ECHA in verifying a registration in relationship to the size of an undertaking, and that this was not taken into account when determining the administrative charge in accordance with the decision of the ECHA administrative council (MB/29/2010). It further submits that it is not permissible to determine the administrative charge payable on the basis of the size of an undertaking, since this leads to a situation whereby larger undertakings bear the brunt of the costs involved in the evaluation of smaller undertakings.

2. Second plea in law: infringement of the principle of proportionality

Pursuant to this principle, the levying of an administrative charge by the defendant has to be proportionate to the work involved for the defendant. According to the applicant, a comparison of the fee (EUR 20 700) with the administrative work involved for the defendant, shows that this is not the case.

3. Third plea in law: infringement of the general principle of equality

In this regard, the applicant submits that the varying administrative charges levied in accordance with the size of an undertaking also constitutes unequal treatment, which is unlawful. Moreover, with the adjustment of its administrative practice, the defendant infringed the principle of equal treatment, in that it treated the applicant differently from other registered undertakings which the defendant permitted, after receiving a registration number, to make adjustments to the size of the undertaking registered so as to avoid the imposition of an administrative charge.

4. Fourth plea in law: infringement of the principle of legal certainty and the right to good administration

Although the defendant realised that, in practice, it is difficult to communicate the correct size of an undertaking for the purposes of registration, it did not provide the applicant with the opportunity — contrary to the right to good administration — to adjust its figures to avoid payment of the administrative charge.

5. Fifth plea in law: unlawful delegation of legislative competencies to the defendant

Article 13(4) of Regulation No 340/2008 empowers the defendant to levy an administrative charge, without specifying the details of how a charge is to be levied or, in particular, any details regarding the charge itself. In the applicant's view, this constitutes an unlawful delegation of legislative competencies to the defendant.

(1) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

(2) Commission Regulation (EC) No 340/2008 of 16 April 2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ 2008 L 107, p. 6).

Action brought on 17 April 2012 — Khwanda v Council

(Case T-178/12)

(2012/C 174/45)

Language of the case: English

Parties

Applicant: Mahran Khwanda (Damascus, Syria) (represented by: S. Jeffrey and S. Ashley, Solicitors, D. Wyatt, QC and R. Blakeley, Barrister)

Defendant: Council of the European Union

Form of order sought

— Annul paragraph 22 of the Annex to Council Implementing Decision 2012/37/CFSP of 23 January 2012 implementing Decision 2011/782/CFSP concerning restrictive measures against Syria (OJ L 19, p. 33), in so far as it relates to the applicant;

— Annul paragraph 22 of the Annex to Council Implementing Regulation (EU) No 55/2012 of 23 January 2012 implementing Article 33(1) of Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 19, p. 6), in so far as it relates to the applicant;

— Declare Articles 18(1) and 19(1) of Council Decision 2011/782/CFSP (1) inapplicable to the applicant;

— Declare Articles 14(1) and 15(1) of Council Regulation (EU) No 36/2012 (2) inapplicable to the applicant;

— Declare that the annulment of paragraph 22 of the Annex to Council Decision 2012/37/CFSP and paragraph 22 of the Annex to Council Regulation (EU) No 55/2012 has immediate effect; and

— Order the Council to pay the cost of the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging

— that the substantive criteria for designation under the contested measures are not met in the applicant's case since there is no legal or factual basis for his designation and that the Council committed a manifest error of assessment in this respect; furthermore that the Council designated the applicant on the basis of insufficient evidence;

— that the applicant produced solid evidence in support of his positive claim and that he has in fact taken active steps to prevent pro-Government elements from accessing Kadmous Tansport's fleet of buses. Whereas the Council failed to produce sufficient evidence to contest these statements.

2. Second plea in law, alleging

— that the designation of the applicant is in violation of his human rights and fundamental freedoms, including his right to respect for his private and family life and to peaceful enjoyment of his possessions and/or in violation of the principle of proportionality.

3. Third plea in law, alleging

— that the Council has in any event breached the procedural requirements: (a) to inform the applicant of his designation individually; (b) to give adequate and sufficient reasons for his listing; (c) respect his rights of defence and the right to effective judicial protection.

(1) OJ L 319, p. 56
(2) OJ L 16, p. 1

Action brought on 26 April 2012 — Bateni v Council

(Case T-181/12)

(2012/C 174/46)

Language of the case: German

Parties

Applicant: Naser Bateni (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010 to the extent that it concerns the applicant;

— order the Council to pay the costs, including those of the applicant;

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the applicant's rights of defence

— The Council infringed the applicant's right to effective judicial protection and in particular the obligation to state reasons in so far as it did not provide a sufficient statement of reasons for the inclusion of the applicant in Annex IX to the contested regulation.

— The Council infringed the applicant's right to a hearing by not providing it with the opportunity, conferred by Article 46(3) and (4) of the contested regulation, to present observations on its inclusion in the sanctions lists and thus to cause the Council to carry out a review.

2. Second plea in law, alleging that there was no basis for including the applicant in the sanctions lists

— The reasons given for including the applicant in the sanctions lists did not make it possible to identify the precise legal basis on which the Council acted.

— An activity carried out by the applicant until only March 2008 cannot justify his inclusion in the sanctions lists in December 2011.

— The applicant's activity as manager of the Hanseatic Trade Trust & Shipping (HTTS) GmbH does not justify his inclusion in the sanctions lists, in particular because the General Court of the European Union annulled Regulation (EU) No 961/2010 (1) to the extent that it concerned HTTS GmbH.

— The mere fact that the applicant was manager of an English company which has since been dissolved cannot constitute a reason under Article 23(2) of the contested regulation for including the applicant in the sanctions lists.

3. Third plea in law, alleging infringement of the applicant's fundamental right to property

— The applicant's inclusion in the sanctions lists constitutes an unjustified interference with his fundamental right to property, since the applicant — because of the inadequate reasons given by the Council — is unable to understand the reasons why he was included in the list of persons affected by the sanctions.

— The applicant's inclusion in the sanctions lists is obviously inappropriate for the pursuit of the goals of the contested regulation and also constitutes a disproportionate interference with his property rights.

(1) Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (OJ 2010 L 281, p. 1).

Action brought on 26 April 2012 — HTTS v Council

(Case T-182/12)

(2012/C 174/47)

Language of the case: German

Parties

Applicant: HTTS Hanseatic Trade Trust & Shipping GmbH (Hamburg, Germany) (represented by: J. Kienzle and M. Schlingmann, lawyers)

Defendant: Council of the European Union

Form of order sought

— Annul Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010, in so far as it concerns the applicant;

— Order the Council to pay the costs of the proceedings, in particular the applicant's expenses.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the applicant's rights of defence

   — In the applicant's submission, the Council infringed the applicant's right to effective legal protection and, in particular, the obligation to state reasons by failing to supply sufficient grounds for the applicant's renewed inclusion in the lists of persons, entities and bodies subject to restrictive measures in accordance with Article 23 of the contested regulation.

   — The Council infringed the applicant's right to be heard by not giving the applicant the opportunity to comment beforehand on its renewed inclusion in the sanctions lists and thereby to trigger a review by the Council.

2. Second plea in law, alleging the absence of any basis for the applicant's renewed inclusion in the sanctions lists

   — According to the applicant, the reasons stated by the Council for the applicant's renewed inclusion in the sanctions lists do not support its renewed inclusion and are substantively inaccurate. In particular, the applicant is not controlled by IRISL.

   — The applicant's inclusion in the sanctions lists is based on a manifestly erroneous assessment by the Council of the applicant's situation and of its activities.

3. Third plea in law, alleging infringement of the applicant's fundamental right to respect for property

   — In the applicant's submission, its renewed inclusion in the sanctions lists represents unjustified interference with its fundamental right to property as the applicant cannot, given the Council's inadequate reasoning, understand on what grounds it has been included in the lists of persons affected by the sanctions.

   — The applicant's inclusion in the sanctions lists represents disproportionate interference with its property rights and is manifestly inappropriate to the fulfilment of the objectives pursued by the contested regulation. In any event, it exceeds that which is necessary for the attainment of those objectives.

Action brought on 23 April 2012 — HUK-Coburg v Commission

(Case T-185/12)

(2012/C 174/48)

Language of the case: German

Parties

Applicant: HUK-Coburg Haftpflicht-Unterstützungs-Kasse kraftfahrender Beamter Deutschlands a.G. in Coburg (Coburg, Germany) (represented by: A. Birnstiel, H. Heinrich and A. Meier, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 23 February 2012 rejecting the applicant's request for access to certain documents in cartel proceedings (COMP/39.125 — Carglass);

— order the defendant to pay its own costs and those incurred by the applicant.

Pleas in law and main arguments

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

1. First plea in law: failure to examine the individual documents requested

   In the context of its first plea in law, the applicant submits that the decision was not based on a concrete and individual assessment of each of the documents concerned. In the applicant's view, the contested decision was based on the wrongful premiss that, in this case, it would generally be presumed that an exception would apply.

2. Second plea in law: infringement of the duty to state reasons

The applicant argues that the Commission provided mere blanket considerations in rejecting the application in its entirety, thereby failing to provide sufficient grounds for its decision. In the applicant's view, this constitutes an infringement of the duty to state reasons and, thereby, an infringement of essential procedural requirements.

3. Third plea in law: unlawful interpretation and application of the first and third indents of Article 4(2) of Regulation (EC) No 1049/2001 ([1])

By its third plea in law, the applicant submits that the Commission's interpretation and application of the exceptions listed in the first and third indents of Article 4(2) of Regulation No 1049/2001 were unlawful. In its view, the Commission failed to recognise the relationship between the rule and the exceptions thereto and proceeded on the basis of a much too broad understanding of 'protection of investigations' and of the term 'commercial interests'.

4. Fourth plea in law: failure to take account of the fact that the implementation of cartel law, which is of a private law nature, constitutes an overriding public interest within the meaning of Article 4(2) of Regulation No 1049/2001

By its fourth plea in law, the applicant maintains that, in failing to release the documents concerned, the Commission wrongly denied an overriding public interest. In the applicant's opinion, in weighing up the interests in releasing the documents, the Commission should have taken account of the fact, in particular, that the implementation of cartel law, which is of a private law nature, also constitutes an overriding public interest within the meaning of Article 4(2) of Regulation No 1049/2001.

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

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 28 November 2011 — ZZ v Commission

(Case F-126/11)

(2012/C 174/49)

Language of the case: French

Parties

Applicant: ZZ (represented by: M. Boury, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

The application to annul the decision of the Appointing Authority as far as it imposes a disciplinary measure in the form of a written reprimand on the applicant.

Form of order sought

— annul the Appointing Authority's decision CMS 10/038 to issue a written reprimand to the applicant, and Appointing Authority Decision No R/393/11 which confirmed the first decision;

— declare that the written reprimand issued by the Appointing Authority to the applicant, without the production of cogent evidence of the alleged acts of harassment of which his is accused and without a proper independent, impartial and fair investigation being carried out which would establish the truth about the alleged harassment which the applicant is accused of committing against his colleague, is a discretionary sanction which constitutes an act of discrimination by the Appointing Authority against the applicant;

— declare that throughout the case the applicant has suffered serious material and non-material damage and that he is, as a result, entitled to compensation for that damage, which is to be determined according to the criteria to be laid down by the Tribunal;

— declare, in particular that throughout the proceedings and the previous connected cases, the applicant has been the victim of serious infringements of his human rights, rights enshrined in the Treaties, in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights and that he is, as a result, entitled to compensation for those infringements, which is for the Tribunal to decide.

Action brought on 29 March 2012 — ZZ v Commission

(Case F-28/12)

(2012/C 174/50)

Language of the case: Italian

Parties

Applicant: ZZ (represented by: G. Cipressa, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

Application for annulment of the implied decision rejecting the applicant's request, first, to remove a sentence from the medical report of 28 February 2008, second, to send the report thus amended to the doctor chosen by the applicant and, third, to remove in general from the file on the work-related injury any information relating the claim, which the applicant maintains is incorrect, that the powder with which the applicant came into contact was ultimately shown to be the white dust of a copy of a newspaper to which the applicant subscribed.

Form of order sought

— Annul the decision rejecting the applicant's claims set out in the request of 23 December 2010;

— In so far as necessary, annul the decision rejecting the complaint of 10 July 2011 against the decision rejecting the request of 23 December 2010;

— Order the Commission to pay the costs.

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