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(2012/C 343/01)

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Past publications

OJ C 319, 20.10.2012

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These texts are available on:

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

GENERAL COURT

Assignment of Judges to Chambers

(2012/C 343/02)

On 9 October 2012, the Plenary Meeting of the General Court decided, in response to the entry into office of Mr Buttigieg, 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] 25 November 2011, [5] 16 May 2012 [6] and 17 September 2012 [7] on the assignment of Judges to Chambers.

For the period from 9 October 2012 to 31 August 2013, 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, Ms Kancheva and Mr Buttigieg, Judges.

First Chamber, sitting with three Judges:

Mr Azizi, President of the Chamber;

(a) Mr Frimodt Nielsen and Ms Kancheva, Judges;
(b) Mr Frimodt Nielsen and Mr Buttigieg, Judges;
(c) Ms Kancheva and Mr Buttigieg, Judges.

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, Ms Kancheva and Mr Buttigieg, 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 2010 C 288, p. 2.
[2] OJ 2010 C 317, p. 5.
[3] OJ 2010 C 346, p. 2.
[4] OJ 2011 C 305, p. 2.
[5] OJ 2011 C 370, p. 5.
[6] OJ 2012 C 174, p. 2.
[7] OJ 2012 C 311, p. 2.

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, Mr Popescu and Mr Berardis, Judges.

Sixth Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

(a) Mr Wahl and Mr Soldevila Fragoso, Judges;
(b) Mr Wahl and Mr Berardis, Judges;
(c) Mr Soldevila Fragoso and Mr Berardis, Judges.

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, Mr Popescu and Mr Berardis, Judges.

Eighth Chamber, sitting with three Judges:

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

For the period from 9 October 2012 to 31 August 2013:

— in the First Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Sixth Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Third Chamber sitting with three Judges. The latter, who shall not be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Third Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Sixth Chamber initially hearing an action, the fourth Judge of that Chamber and one Judge from the Eighth Chamber sitting with three Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Sixth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall the other two Judges of the Eighth Chamber initially hearing an action and two Judges from the Sixth Chamber, sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated for one year in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the Eighth Chamber (Extended Composition), the Judges who shall sit with the President of the Chamber to form the extended composition shall be the other two Judges of the Eighth Chamber initially hearing an action and two Judges from the Sixth Chamber, sitting with four Judges. The latter two Judges, neither of whom shall be the President of the Chamber, shall be designated in accordance with the order of seniority provided for in Article 6 of the Rules of Procedure of the General Court;

— in the First and Sixth Chambers sitting with three Judges, the President of the Chamber shall sit successively with the Judges referred to in (a), (b) and (c), depending on the composition to which the Judge Rapporteur is assigned. For cases in which the President is the Judge Rapporteur, the President of the Chamber shall sit successively with the Judges of each of those compositions in the order of registration of the cases, without prejudice to the connexity of the cases.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 31 July 2012 — Coty Prestige Lancaster Group GmbH v First Note Perfumes NV

(Case C-360/12)

(2012/C 343/03)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant and appellant on a point of law: Coty Prestige Lancaster Group GmbH

Defendant and respondent on a point of law: First Note Perfumes NV

Questions referred

1. Is Article 93(5) of Regulation (EC) No 40/94 [1] to be interpreted as meaning that an act of infringement is committed in one Member State (Member State A), within the meaning of Article 93(5) of Regulation (EC) No 40/94, in the case where, as a result of an act in another Member State (Member State B), there is participation in the infringement in the first-named Member State (Member State A)?

2. Is Article 5(3) of Regulation (EC) No 44/2001 [2] to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) if the tortious act which is the subject of the action or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tortious act (principal act) which took place in the first-named Member State (Member State A)?

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

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

Reference for a preliminary ruling from the Curtea de Apel Brașov (Romania) lodged on 2 August 2012 — Corpul Național al Polițiștilor — Biroul Executiv Central, representing Constantin Chițea and Others v Ministerul Administrației și Internelor, Inspectoratul General al Poliției Române, Inspectoratul de Poliție al Județului Brașov

(Case C-369/12)

(2012/C 343/04)

Language of the case: Romanian

Referring court

Curtea de Apel Brașov (Romania)

Parties to the main proceedings

Applicants: Corpul Național al Polițiștilor — Biroul Executiv Central, representing Constantin Chițea and Others

Defendants: Ministerul Administrației și Internelor, Inspectoratul General al Poliției Române, Inspectoratul de Poliție al Județului Brașov

Questions referred

1. Must the second sentence of Article 51(1) of the Charter of Fundamental Rights of the European Union be interpreted, with reference to Article 20 of that Charter, as meaning that employees paid from public funds have the same rights as the employees of commercial companies which are State-owned or subsidised by the State budget?

2. Must the second sentence of Article 51(1) of the Charter of Fundamental Rights of the European Union be interpreted, with reference to Article 21(1) of that Charter, as precluding discrimination between employees paid from public funds and employees of commercial companies which are State-owned or subsidised by the State budget?

3. Must the phrase 'his or her possessions' (with reference to citizens) in the second sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union be interpreted as also covering remuneration rights?

4. Must the phrase 'in the public interest' in the second sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union be interpreted as relating to 'economic crisis'?

5. Must the words 'use of property. in so far as is necessary for the general interest' in the third sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union be interpreted as covering a '25 % reduction of the salaries of public sector employees'?

6. If the Romanian State were to reduce by 25 % the remuneration of employees paid from public funds, citing as justification the economic crisis and the need to balance the State budget, would that mean that, subsequently, in accordance with the second sentence of Article 17(1) of the Charter of Fundamental Rights of the European Union, the State would be under an obligation to pay those employees fair compensation in good time for the loss sustained?

Reference for a preliminary ruling from the Landgericht Rostock (Germany) lodged on 13 August 2012 — Criminal proceedings against Per Harald Lökkevik

(Case C-384/12)

(2012/C 343/05)

Language of the case: German

Referring court

Landgericht Rostock

Parties to the main proceedings

Per Harald Lökkevik

Other party: Staatsanwaltschaft Rostock

Question referred

Should the concept of an advantage within the meaning of Article 4(3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 [1] be interpreted as meaning that it includes a situation in which it appears that simply a lack of competence of the European Commission has been brought about by statements made in a subsidy procedure for the purposes of avoiding the prescribed notification of regional investment aid projects with total project costs of at least EUR 50 million laid down in Section 2(1)(i) of the Multisectoral framework on regional aid for large investment projects of 7 April 1998 (OJ 1998 C 107, p. 7)?

[1] OJ 1995 L 312, p. 1.

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 15 August 2012 — Hi Hotel HCF SARL v Uwe Spoering

(Case C-387/12)

(2012/C 343/06)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: Hi Hotel HCF SARL

Respondent on a point of law: Uwe Spoering

Question referred

Is Article 5(3) of Regulation (EC) No 44/2001 [1] to be interpreted as meaning that the harmful event occurred in one Member State (Member State A) in the case where the tort or delict which forms the subject-matter of the proceedings or from which claims are derived was committed in another Member State (Member State B) and consists in participation in the tort or delict (principal act) committed in the first Member State (Member State A)?

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

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) lodged on 20 August 2012 — 1. Robert Pfleger and Others

(Case C-390/12)

(2012/C 343/07)

Language of the case: German

Referring court

Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria)

Parties to the main proceedings

Applicants: Robert Pfleger, Autoart a.s., Mladen Vucicevic, Maroxx Software GmbH, Hans-Jörg Zehetner

Questions referred

1. Does the principle of proportionality laid down in Article 56 TFEU and in Articles 15 to 17 of the Charter of Fundamental Rights preclude national legislation like the relevant provisions in the main proceedings, Paragraphs 3 to 5 and Paragraphs 14 and 21 of the GSpG, which permits the organisation of games of chance using machines only on the condition — which may be enforced by both criminal penalties and direct intervention — of the prior issue of a licence, which is available only in limited numbers, even though — as far as can be seen — the State has not shown thus far in a single judicial or administrative procedure that associated crime and/or addiction to gambling actually constitute a significant problem which cannot be remedied by a controlled expansion of authorised gaming activities to a large number of individual providers, but only by a controlled expansion, coupled with only moderate advertising, by one monopoly holder (or a small number of oligopolists)?

2. In the event that the first question is to be answered in the negative: Does the principle of proportionality laid down in Article 56 TFEU and in Articles 15 to 17 of the Charter of Fundamental Rights preclude national legislation like Paragraphs 52 to 54 of the GSpG, Paragraph 56a of the GSpG and Paragraph 168 of the StGB by which, as a result of imprecise legal definitions, there is almost complete criminal liability, even for various forms of only very remotely involved (possibly resident in other European Union Member States) persons (such as the mere sellers or lessors of gaming machines)?

3. In the event that the second question is also to be answered in the negative: Do the requirements relating to democracy and the rule of law on which Article 16 of the Charter of Fundamental Rights is clearly based and/or the requirement of fairness and efficiency under Article 47 of the Charter of Fundamental Rights and/or the obligation of transparency under Article 56 TFEU and/or the right not to be tried or punished twice under Article 50 of the Charter of Fundamental Rights preclude national rules like Paragraphs 52 to 54 of the GSpG, Paragraph 56a of the GSpG and Paragraph 168 of the StGB, the delimitation between which is not really foreseeable or predictable *ex ante* for a citizen, in the absence of clear legislative provision, and can be clarified in each specific case only through an expensive formal procedure, but which are associated with extensive differences in terms of competences (administrative authority or court), powers of intervention, the connected stigmatisation in each case and procedural position (e.g. reversal of the burden of proof)?

4. In the event that one of the first three questions is to be answered in the affirmative: Does Article 56 TFEU and/or Articles 15 to 17 of the Charter of Fundamental Rights and/or Article 50 of the Charter of Fundamental Rights preclude the punishment of persons who have one of the close connections with a gaming machine mentioned in Paragraph 2(1)(1) and Paragraph 2(2) of the GSpG and/or the seizure or confiscation of such machines and/or the closure of the entire undertaking owned by such persons?

Reference for a preliminary ruling from the Bundesgerichtshof (Germany), lodged on 22 August 2012 — RLvS Verlagsgesellschaft mbH v Stuttgarter Wochenblatt GmbH

(Case C-391/12)

(2012/C 343/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant on a point of law: RLvS Verlagsgesellschaft mbH

Respondent on a point of law: Stuttgarter Wochenblatt GmbH

Question referred

Do Article 7(2) and point 11 of Annex I, in conjunction with Articles 4 and 3(5), of the Directive [1] preclude the application of a national provision (in this case, Paragraph 10 of the Landespressegesetz Baden-Württemberg (Law governing the Press of the *Land* of Baden-Württemberg)) which is intended not only to protect consumers against misleading practices but also to protect the independence of the press and which, in contrast to Article 7(2) and point 11 of Annex I to the Directive, prohibits any publication for remuneration, irrespective of the purpose thereby pursued, if that publication is not identified by the use of the term 'advertisement', unless it is already evident from the arrangement and layout of the publication that it is an advertisement?

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[1] Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

Appeal brought on 24 August 2012 by Organismos Kypriakis Galaktokomikis Viomichanias against the judgment of the General Court (Eighth Chamber) delivered on 13 June 2012 in Case T-534/10 Organismos Kypriakis Galaktokomikis Viomichanias v OHIM

(Case C-393/12 P)

(2012/C 343/09)

Language of the case: German

Parties

Appellant: Organismos Kypriakis Galaktokomikis Viomichanias (represented by: C. Milbradt and A. Schwarz, Rechtsanwältinnen)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

— Set aside the decision of the Eighth Chamber of the General Court of the European Union of 13 June 2012 (T-534/10);

— order the respondent to pay the costs of the proceedings, including the costs incurred during the appeal procedure.

Pleas in law and main arguments

The appeal is brought against the judgment of the Eighth Chamber of the General Court of 13 June 2012, by which the General Court dismissed the appellant's action against the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 20 September 2010 relating to opposition proceedings between Organismos Kypriakis Galaktokomikis Viomichanias and Garmo AG concerning registration of the Community trade mark 'Hellim'.

The appellant relies on the following grounds of appeal.

First, the General Court misapplied Article 8(1)(b) of Regulation No 207/2009 ('the CTM Regulation'), [1] by erroneously ruling out any visual or phonetic similarity between the signs 'hellim' and 'halloumi'. The General Court correctly confirmed that the marks share the same first letter, the combination of the letters 'll' and the last letters 'i' and 'm' (albeit in reverse order). However, it proceeded on the basis that, overall, any visual similarity had to be ruled out. That conclusion is contradictory. Given that the General Court confirms that there are certain similarities between the signs at issue, it cannot be concluded from this that there is no visual similarity at all.

Secondly, the General Court failed to examine in detail the distinctive character of the mark, even though a determination of the distinctive character would have been required and would have played a decisive role in the assessment of the likelihood of confusion. The General Court was guided in that regard by the decision of the Board of Appeal and, without further examination, proceeded on the assumption that the mark is descriptive of a cheese of a particular region of Cyprus. Yet that issue is crucial. Since the particular features of a collective mark are precisely such that, to a certain extent, exceptions may be made to the rule prohibiting the registration of descriptive elements of a mark, the General Court's reasoning leads indirectly to the conclusion that a collective mark automatically has only weak distinctive character. That assumption is incompatible with Article 66 of the CTM Regulation. Even though 'Halloumi' is a collective mark, that in itself reveals nothing about the distinctive character of the mark, which should have been examined separately and in depth. Halloumi is the name of a cheese produced specifically by that collective and is not generally descriptive information in respect of cheese, soft cheese or similar. Halloumi cannot therefore be compared to 'Mozzarella', for example.

Last, the General Court's conclusion that any visual or phonetic similarities had to be ruled out, notwithstanding its confirmation of shared features, and its reasoning by which the distinctive character of the mark was, without any detailed assessment, regarded as weak has resulted in an assessment and denial of the likelihood of confusion that is wrong in law.

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

Reference for a preliminary ruling from the Asylgerichtshof (Austria) lodged on 27 August 2012 — Shamso Abdullahi

(Case C-394/12)

(2012/C 343/10)

Language of the case: German

Referring court

Asylgerichtshof

Parties to the main proceedings

Appellant: Shamso Abdullahi

Respondent: Bundesasylamt

Questions referred

1. Is Article 19 in conjunction with Article 18 of Regulation (EC) No 343/2003 [1] to be interpreted as meaning that, following the agreement of a Member State in accordance

with those provisions, that Member State is the State responsible for examining the asylum application within the meaning of the introductory part of Article 16(1) of Regulation No 343/2003, or does European law oblige the national review authority where, in the course of an appeal or review procedure in accordance with Article 19(2) of Regulation (EC) No 343/2003, irrespective of that agreement, it comes to the view that another State is the Member State responsible pursuant to Chapter III of Regulation (EC) No 343/2003 (even where that State has not been requested to take charge or has not given its agreement), to determine that the other Member State is responsible for the purposes of its appeal or review procedure? In that regard, does every asylum seeker have an individual right to have his application for asylum examined by a particular Member State responsible in accordance with those responsibility criteria?

2. Is Article 10(1) of Regulation (EC) No 343/2003 to be interpreted as meaning that the Member State in which a first irregular entry takes place ('first Member State') must accept its responsibility for examining the asylum application of a third-country national if the following situation materialises:

   A third-country national travels from a third country, entering the first Member State irregularly. He does not claim asylum there. He then departs for a third country. After less than three months, he travels from a third country to another EU Member State ('second Member State'), which he enters irregularly. From that second Member State, he continues immediately and directly to a third Member State, where he lodges his first asylum claim. At this point, less than 12 months have elapsed since his irregular entry into the first Member State.

3. Irrespective of the answer to Question 2, if the 'first Member State' referred to therein is a Member State whose asylum system displays systemic deficiencies equivalent to those described in the judgment of the European Court of Human Rights of 21 January 2011, M.S.S., 30.696/09, is it necessary to come to a different assessment of the Member State with primary responsibility within the meaning of Regulation (EC) No 343/2003, notwithstanding the judgment of the European Court of Justice of 21 December 2011 in Joined Cases C-411/10 and C-493/10 [*NS* v *Secretary of State for the Home Department and ME and Others* v *Refugee Applications Commissioner*]? In particular, can it be assumed that a stay in such a Member State cannot from the outset constitute an event establishing responsibility within the meaning of Article 10 of Regulation (EC) No 343/2003?

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

Action brought on 28 August 2012 — Bundesrepublik Deutschland v Council of the European Union

(Case C-399/12)

(2012/C 343/11)

Language of the case: German

Parties

Applicant: Bundesrepublik Deutschland (represented by: N. Graf Vitzthum and T. Henze, Agents)

Defendant: Council of the European Union

Form of order sought

— Annul the Council decision of 18 June 2012; (1)

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

Pleas in law and main arguments

By its action, the Bundesrepublik Deutschland (Federal Republic of Germany) challenges the Council decision of 18 June 2012 'establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV)'.

According to the Federal Government, Article 218(9) TFEU was the incorrect legal basis for the adoption of the decision. Article 218(9) TFEU concerns in the first instance only the adoption of the positions of the Union in bodies, set up by international agreements, of which the Union is a member. Article 218(9) TFEU cannot however be applied in relation to the representation of the Member States in bodies of international organisations in which only the Member States participate by virtue of separate international treaties. Second, Article 218(9) TFEU covers only 'acts having legal effects', meaning acts binding under international law. OIV resolutions are however not acts in that sense.

Moreover no other legal basis for the adoption of the Council decision is apparent.

(1) Council Document No 11436 'establishing the position to be adopted on behalf of the European Union with regard to certain resolutions to be voted in the framework of the International Organisation for Vine and Wine (OIV)'.

Appeal brought on 5 September 2012 by YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH against the judgment of the General Court (Third Chamber) delivered on 27 June 2012 in Case T-448/07: YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH v European Commission

(Case C-408/12 P)

(2012/C 343/12)

Language of the case: English

Parties

Appellants: YKK Corp., YKK Holding Europe BV, YKK Stocko Fasteners GmbH (represented by: D. Arts, W. Devroe, advocaten, E. Winter, Rechtsanwältin, F. Miotto, Advocate)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court of 27 June 2012 in Case T-448/07, YKK Cop., YKK Holding Europe BV and YKK Stocko Fasteners GmbH v. European Commission;

— annul Article 2(1) and Article 2(3) of the contested Decision in so far as it concerns the Appellants and/or to reduce the relevant fines;

— order the European Commission to pay the costs at first instance and for the present appeal.

Pleas in law and main arguments

In their first ground of appeal, the Appellants submit that the General Court erred in law by not adequately stating its reasons for rejecting their plea relating to the disproportionate starting amount of the fine, which makes it impossible for the Appellants to determine whether the General Court rejected their plea on the ground that the Commission (a) took sufficient account of the impact of the infringement on the market; or (b) did not take account of the impact of the infringement on the market because it did not have to. Secondly, should it appear that the General Court ruled that the Commission took sufficient account of impact on the market, the Appellants submit that, in so doing, the General Court misinterpreted the contested Decision and infringed EU law, in particular Article 23(2) and (3) of Regulation 1/2003 [1] and the case law of the ECJ, which require that the Commission, where it considers it appropriate to take into account impact on the market in order to increase the starting amount of the fine to more than the minimum likely amount of EUR 20 million fixed by the Guidelines [2], must provide specific, credible and adequate evidence to assess the actual influence of the infringement on competition in that market. Thirdly, should it appear that the General Court ruled that the Commission did not take into account impact on the market because it did not have to, the Appellants submit that, in so doing, the General Court misapplied EU law, according to which sanctions under national and EU law do not only have to be real and deterrent but also proportionate to the infringement committed.

In their second ground of appeal, the Appellants submit that the General Court did not adequately state reasons for rejecting the applicants' plea concerning the Commission's failure to apply the 2002 Leniency Notice. The Appellants submit that, in any event, the General Court's judgment misinterprets EU law, in particular the lex mitior principle, according to which the more lenient law must apply retroactively.

In their third ground of appeal, the Appellants submit that, by dismissing the applicants' plea relating to the incorrect application by the Commission of the 10 % ceiling to the fine in relation to the BWA cooperation for the period preceding Stocko's acquisition by YKK, for which Stocko is considered to be solely and exclusively liable, the General Court infringed Article 23(2) of Regulation 1/2003 including the inherent principle of proportionality, the principle that penalties must be specific to the individual and the offence, according to which an undertaking may be penalised only for acts imputed to it individually, and the principle of equal treatment.

In their fourth ground of appeal, the Appellants submit that, in dismissing the applicants' plea concerning the incorrect application by the Commission in the contested Decision of the multiplier for the period preceding the acquisition of Stocko, the General Court provided an inadequate statement of reasons and that, in any event, the General Court violated Article 23(2) of Regulation 1/2003, the enshrined principle that penalties must be specific to the individual concerned and the related principle of proportionality as well as the principle of equal treatment, by accepting that the increase for deterrence was justified for the period prior to Stocko's acquisition by YKK, for which Stocko has been held solely and exclusively liable.

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(1) Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty
OJ 2003, L 001, p. 1.

(2) Guidelines on the method of setting fines imposed pursuant to Article 15(2) of Regulation No 17 and Article 65(5) of the ECSC Treaty
OJ 1998 C 9, p. 3.

GENERAL COURT

Judgment of the General Court of 20 September 2012 — DEI v Commission

(Case T-169/08) [1]

(Competition — Abuse of dominant position — Greek market for the supply of lignite and Greek wholesale electricity market — Decision finding an infringement of Article 86(1) EC, read in combination with Article 82 EC — Grant or maintenance of rights awarded by the Hellenic Republic in favour of a public undertaking for the extraction of lignite)

(2012/C 343/13)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: P. Anestis, lawyer)

Defendant: European Commission (represented by: T. Christoforou, A. Bouquet and A. Antoniadis, Agents, assisted by A. Oikonomou, lawyer)

Intervener in support of the applicant: Hellenic Republic (represented by: K. Boskovits and P. Mylonopoulos, Agents, assisted initially by A. Komninos and M. Marinos, and subsequently by M. Marinos, lawyers)

Interveners in support of the defendant: Energeiaki Thessalonikis AE (Echedoros, Greece); and Elliniki Energeia kai Anaptyxi AE (HE & DSA), (Kifissia, Greece) (represented by: P. Skouris and E. Trova, lawyers)

Re:

Application for annulment of Commission Decision C(2008) 824 final of 5 March 2008, concerning the grant or maintenance by the Hellenic Republic of rights in favour of DEI for the extraction of lignite

Operative part

The Court:

1. *Annuls Commission Decision C(2008) 824 final of 5 March 2008, concerning the grant or maintenance by the Hellenic Republic of rights in favour of Dimosia Epicheirisi Ilektrismou AE (DEI) for the extraction of lignite.*

2. *Orders the European Commission to bear its own costs and pay those incurred by DEI.*

3. *Orders the Hellenic Republic, Elliniki Energeia kai Anaptyxi AE (HE & DSA) and Energeiaki Thessalonikis AE to bear their own costs.*

[1] OJ C 183, 19.7.2008.

Judgment of the General Court of 11 September 2012 — Corsica Ferries France v Commission

(Case T-565/08) [1]

(State aid — Maritime cabotage sector — Service of general economic interest — Private investor in a market economy test — Social policy of the Member States — Restructuring aid — Effects of a judgment annulling a decision)

(2012/C 343/14)

Language of the case: French

Parties

Applicant: Corsica Ferries France SAS (Bastia, France) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: European Commission (represented by: C. Giolito and B. Stromsky, acting as Agents)

Interveners in support of the defendant: French Republic (represented: initially by G. de Bergues and A.-L. Vendrolini, and subsequently by G. de Bergues, N. Rouam and J. Rossi, acting as Agents) and Société nationale maritime Corse-Méditerranée (SNCM) SA (Marseilles, France) (represented by: A. Winckler and F.-C. Laprévote, lawyers)

Re:

Annulment of Commission Decision 2009/611/EC of 8 July 2008 concerning the measures C 58/02 (ex N 118/02) which France has implemented in favour of the Société nationale maritime Corse-Méditerranée (OJ 2009 L 225, p. 180).

Operative part of the judgment

The General Court:

1. *Annuls the first and third paragraphs of Article 1 of Commission Decision 2009/611/EC of 8 July 2008 concerning the measures C 58/02 (ex N 118/02) which France has implemented in favour of the Société nationale maritime Corse-Méditerranée (SNCM);*

2. *Orders the European Commission to bear the costs of the applicant together with its own costs;*

3. *Orders the French Republic and SNCM to bear their own respective costs.*

[1] OJ C 55, 7.3.2009.

Judgment of the General Court of 26 September 2012 — Italy v Commission

(Case T-84/09) [1]

(EAGGF — Guarantee Section — Expenditure excluded from financing — Provision of information and promotion of agricultural products — Production of olive oil and table olives — Late payment)

(2012/C 343/15)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: L. Ventrella and G. Palmieri, avvocati dello Stato)

Defendant: European Commission (represented by: F. Jimeno Fernández and P. Rossi, Agents)

Re:

Application for annulment of Commission Decision 2008/960/EC of 8 December 2008 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) and under the European Agricultural Guarantee Fund (EAGF) (OJ 2008 L 340, p. 99), as far as it excludes certain expenditure incurred by the Italian Republic.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

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[1] OJ C 90, 18.4.2009.

Judgment of the General Court of 26 September 2012 — Serrano Aranda v OHIM — Burg Groep (LE LANCIER)

(Case T-265/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark LE LANCIER — Earlier national word and figurative marks EL LANCERO — Relative grounds for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Opposition dismissed)

(2012/C 343/16)

Language of the case: Dutch

Parties

Applicant: Enrique Serrano Aranda (Murcia, Spain) (represented: initially by J. Calderón Chavero and T. Villate Consonni, then J. Calderón Chavero, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented: initially by W. Verberg and S. Bonne, then S. Bonne, Agents)

Other party to the proceedings before the Board of Appeal of OHIM: Burg Groep BV (Bergen, Netherlands)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 27 March 2009 (Case R 366/2008-1), relating to opposition proceedings between Mr Enrique Serrano Aranda and Burg Groep BV.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr Enrique Serrano Aranda to pay the costs.*

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[1] OJ C 205, 29.8.2009.

Judgment of the General Court of 26 September 2012 — IG Communications Ltd v OHIM — Citigroup and Citibank (CITIGATE)

(Case T-301/09) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark CITIGATE — Earlier national and Community word and figurative marks containing the element 'citi' — Relative grounds for refusal — Likelihood of confusion — Family of trade marks — Article 8(1)(b) of Regulation (EC) No 207/2009 — Unfair advantage taken of the distinctive character or the repute of the earlier trade mark — Article 8(5) of Regulation No 207/2009)

(2012/C 343/17)

Language of the case: English

Parties

Applicant: IG Communications Ltd (London, United Kingdom) (represented by: M. Edenborough QC and R. Beard, Solicitor)

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

Other parties to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Citigroup, Inc. (New York, New York, United States); and Citibank, NA (New York) (represented: initially by V. von Bomhard, A. Renck, lawyers, and H. O'Neill, Solicitor, and subsequently by V. von Bomhard and A. Renck)

Re:

Action against the decision of the First Board of Appeal of OHIM of 30 April 2009 (Case R 821/2005-1) concerning opposition proceedings between Citigroup, Inc. and Citibank, NA, on the one hand, and IG Communications Ltd on the other.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders IG Communications Ltd to pay the costs.*

([1]) OJ C 244, 10.10.2009.

Judgment of the General Court of 20 September 2012 — Poland v Commission

(Case T-333/09) ([1])

(EAGGF — Modulation — Allocation between the Member States of savings made — Distinction between the old Member States and those which acceded to the European Union in 2004 — Article 9(2) of Regulation (EC) No 73/2009 — Solidarity — Equal treatment — Duty to state reasons)

(2012/C 343/18)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented: initially by M. Dowgielewicz, and subsequently by M. Szpunar, B. Majczna and D. Krawczyk, Agents)

Defendant: European Commission (represented by: F. Clotuche-Duvieusart and M. Owisany-Hornung, Agents)

Re:

Application for partial annulment of Commission Decision 2009/444 of 10 June 2009 allocating the amounts resulting from the modulation provided for in Articles 7 and 10 of Council Regulation (EC) No 73/2009 to the Member States for the years 2009 to 2012 (OJ 2009 L 148, p. 29) in so far as Annex I allocates to Member States for 2012 the amounts resulting from the modulation provided for in Article 9(2) and (3) of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers, amending Regulations (EC) No 1290/2005, (EC) No 247/2006, (EC) No 378/2007 and repealing Regulation (EC) No 1782/2003 (OJ 2009 L 30, p. 16).

Operative part of the judgment

The Court:

1. *Dismisses the application;*

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

([1]) OJ C 267, 7.11.2009.

Judgment of the General Court of 20 September 2012 — DEI v Commission

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

(Competition — Abuse of dominant position — Greek markets for the supply of lignite and wholesale electricity — Decision establishing the specific measures to correct the anti-competitive effects of an infringement of Article 86(1) EC, in conjunction with Article 82 EC, identified in an earlier decision — Article 86(3) EC — Annulment of the earlier decision)

(2012/C 343/19)

Language of the case: Greek

Parties

Applicant: Dimosia Epicheirisi Ilektrismou AE (DEI) (Athens, Greece) (represented by: P. Anestis, lawyer)

Defendant: European Commission (represented by: T. Christoforou and A. Antoniadis, Agents, and by A. Oikonomou, lawyer)

Intervener in support of the applicant: Hellenic Republic (represented by: P. Mylonopoulos and K. Boskovits, Agents, and by M. Marinos, lawyer)

Re:

Application for annulment of Commission Decision C(2009) 6244 final of 4 August 2009 establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of DEI for the extraction of lignite.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2009) 6244 final of 4 August 2009 establishing the specific measures to correct the anti-competitive effects of the infringement identified in the Commission Decision of 5 March 2008 on the granting or maintaining in force by the Hellenic Republic of rights in favour of Dimosia Epicheirisi Ilektrismou AE (DEI) for the extraction of lignite;*

2. *Orders the European Commission to pay the costs incurred by DEI, in addition to bearing its own;*

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

([1]) OJ C 11, 16.1.2010.

Judgment of the General Court of 20 September 2012 — Hungary v Commission

(Case T-89/10) ([1])

(Structural funds — Financial assistance — M43 Motorway between Szeged and Makó — VAT — Non-eligible expenditure)

(2012/C 343/20)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented: initially by J. Fazekas, K. Szíjjártó and M.Z. Fehér, then by M.Z. Fehér and K. Szíjjártó, agents)

Defendant: European Commission (represented by: D. Triantafyllou, V. Bottka and A. Steiblytė, agents)

Re:

Action for annulment brought against the Commission Decision of 14 December 2009 relating to the major project 'M43 Motorway between Szeged and Makó', forming part of the 'Transport' operational programme for European Union structural support from the European Regional Development Fund (ERDF) and the Cohesion Fund under the 'Convergence' objective (CCI 2008HU161PR016)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hungary to pay the costs.*

([1]) OJ C 100, 17.4.2010.

Judgment of the General Court of (Sixth Chamber) of 20 September 2012 — France v Commission

(Case T-154/10) ([1])

(State aid — Aid allegedly implemented by France in the form of an implied, unlimited guarantee in favour of La Poste as a result of its status as a publicly-owned establishment — Decision declaring the aid incompatible with the internal market — Action for annulment — Interest in bringing proceedings — Admissibility — Burden of proving the existence of State aid — Advantage)

(2012/C 343/21)

Language of the case: French

Parties

Applicant: French Republic (represented: initially by E. Belliard, G. de Bergues, B. Beaupère-Manokha, J. Gstalter and S. Menez, and subsequently by E. Belliard, G. de Bergues, J. Gstalter and S. Menez, acting as Agents)

Defendant: European Commission (represented by: B. Stromsky and D. Grespan, acting as Agents)

Re:

Application for annulment of Commission Decision 2010/605/EU of 26 January 2010 on State aid C 56/07 (formerly E 15/05) granted by France to La Poste (OJ 2010 L 274, p. 1).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 161, 19.6.2010.

Judgment of the General Court of 26 September 2012 — LIS v Commission

(Case T-269/10) ([1])

(Dumping — Importation of compact fluorescent lamps with integrated electronic ballast originating in China — Request for reimbursement of duties collected — Article 11(8) of Regulation (EC) No 384/96 (now Article 11(8) of Regulation (EC) No 1225/2009) — Conditions — Evidence)

(2012/C 343/22)

Language of the case: German

Parties

Applicant: LIS GmbH Licht Impex Service (Mettmann, Germany) (represented by: K.-P. Langenkamp, G. Hebrant and G. Holler, lawyers)

Defendant: European Commission (represented by: H. van Vliet and T. Maxian Rusche, agents)

Re:

Action for annulment of Commission Decision C(2010) 2198 final of 12 April 2010 concerning requests for reimbursement of anti-dumping duties paid in respect of the importation of compact fluorescent lamps with integrated electronic ballast originating in the People's Republic of China.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders LIS GmbH Licht Impex Service to pay the costs.*

([1]) OJ C 234, 28.8.2010.

Judgment of the General Court of 21 September 2012 — Wesergold Getränkeindustrie v OHIM — Lidl Stiftung (WESTERN GOLD)

(Case T-278/10) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark WESTERN GOLD — Earlier national, international and Community word marks WESERGOLD, Wesergold, and WeserGold — Relative grounds for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Distinctiveness of the earlier marks)

(2012/C 343/23)

Language of the case: German

Parties

Applicant: Wesergold Getränkeindustrie GmbH & Co. KG (Rinteln, Germany) (represented by: P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Lidl Stiftung & Co. KG (Neckarsulm, Germany) (represented by A. Marx and M. Schaeffer, lawyers)

Re:

Action brought against the decision of the First Board Board of Appeal of OHIM of 24 March 2010 (Case R 770/2009-1) concerning opposition proceedings between Wesergold Getränkeindustrie GmbH & Co. KG and Lidl Stiftung & Co. KG

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 24 March 2010 (Case R 770/2009-1);*

2. *Orders OHIM to bear its own costs and also to pay the costs of the applicant;*

3. *Orders Lidl Stiftung & Co. KG to bear its own costs.*

[1] OJ C 221, 14.8.2010.

Judgment of the General Court of 20 September 2012 — Hungary v Commission

(Case T-407/10) [1]

(Structural funds — Financial assistance — Budapest-Kelenföld-Székesfehérvár-Boba railway line — VAT — Non-eligible expenditure)

(2012/C 343/24)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M.Z. Fehér and K. Szíjjártó, agents)

Defendant: European Commission (represented by: A. Steiblytė, D. Triantafyllou and V. Bottka, agents)

Re:

Action for annulment brought against the Commission Decision of 8 July 2010 relating to the major project for 'Reconstruction of the Budapest-Kelenföld-Székesfehérvár-Boba railway line, section 1, phase 1' forming part of the 'Transport' operational programme for structural support from the European Regional Development Fund (ERDF) and the Cohesion Fund (CCI 2008HU161PR015).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Hungary to pay the costs.*

[1] OJ C 317, 20.11.2010.

Judgment of the General Court of 20 September 2012 — HerkuPlast Kubern v OHIM — How (eco-pack)

(Case T-445/10) [1]

(Community trade mark — Opposition proceedings — Application for Community trade mark eco-pack — Earlier national and international word marks ECOPAK — Likelihood of confusion — Similarity of the goods — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2012/C 343/25)

Language of the case: German

Parties

Applicant: HerkuPlast Kubern GmbH (Ering, Germany) (represented by: G. Würtenberger and R. Kunze, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Heidi A.T. How (Harrow, United Kingdom)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 27 July 2010 (Case R 2014/2009-4) concerning opposition proceedings between HerkuPlast Kubern GmbH and Heidi A.T. How.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of Office for Harmonisation in the Internal Market of 27 July 2010 (Case R 2014/2009-4);*

2. *Orders OHIM to pay the costs incurred by HerkuPlast Kubern GmbH and to bear its own costs.*

(1) OJ C 317, 20.11.2010.

Order of the General Court of 13 September 2012 — Diadikasia Symbouloi Epicheiriseon v Commission and Others

(Case T-369/11) (1)

(Action for damages — Instrument for Pre-Accession Assistance — Third country — National public procurement — Decentralised management — Inadmissibility — Lack of jurisdiction)

(2012/C 343/26)

Language of the case: English

Parties

Applicant: Diadikasia Symbouloi Epicheiriseon AE (Chalandri, Greece) (represented by: A. Krystallidis, lawyer)

Defendants: European Commission (represented by: F. Erlbacher and P. van Nuffel, Agents); European Union Delegation to Turkey (Ankara, Turkey); and Central Finance & Contracts Unit (CFCU) (Ankara, Turkey)

Re:

Application for compensation in respect of the damage arising from the CFCU's decision of 5 April 2011, and any subsequent decision, annulling the award of the contract 'Enlargement of the European Turkish Business Centres Network to Sivas, Antakya, Batman and Van — EuropeAid/128621/D/SER/TR' to the consortium Diadikasia Business Consultants SA (GR) — Wyg International Ltd (UK) — Deleeuw International Ltd (TR) — Cyberpark (TR), on the ground of allegedly false declarations

Operative part of the order

1. *The action is dismissed.*

2. *Diadikasia Symbouloi Epicheiriseon AE shall bear its own costs and pay those incurred by the European Commission.*

(1) OJ C 282, 24.9.2011.

Action brought on 20 August 2012 — Brouwerij Van Honsebrouck v OHIM — Beverage Trademark (KASTEEL)

(Case T-374/12)

(2012/C 343/27)

Language in which the application was lodged: French

Parties

Applicant: Brouwerij Van Honsebrouck (Ingelmunster, Belgium) (represented by: P. Maeyaert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Beverage Trademark Co. Ltd BTM (Tortola, British Virgin Islands)

Form of order sought

— annul in its entirety the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 June 2012 in Case R 2551/2010-2;

— order OHIM and Beverage Trademark Co. Ltd BTM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: The international figurative mark incorporating the word element 'KASTEEL' for goods in Class 32 — International registration No W 975 635

Proprietor of the mark or sign cited in the opposition proceedings: Beverage Trademark Co. Ltd BTM

Mark or sign cited in opposition: National mark 'CASTEL BEER' for goods in Class 32

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— Breach of Article 76(1) of Regulation No 207/2009;

— Breach of Article 42 of Regulation No 207/2009;

— Breach of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 20 August 2012 — Brouwerij Van Honsebrouck v OHIM — Beverage Trademark (KASTEEL)

(Case T-375/12)

(2012/C 343/28)

Language in which the application was lodged: French

Parties

Applicant: Brouwerij Van Honsebrouck (Ingelmunster, Belgium) (represented by: P. Maeyaert, lawyer)

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

Other party to the proceedings before the Board of Appeal: Beverage Trademark Co. Ltd BTM (Tortola, British Virgin Islands)

Form of order sought

— annul in its entirety the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 8 June 2012 in Case R 652/2011-2;

— order OHIM and Beverage Trademark Co. Ltd BTM to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The international word mark 'KASTEEL' for goods in Class 32 — International registration No W 975 634

Proprietor of the mark or sign cited in the opposition proceedings: Beverage Trademark Co. Ltd BTM

Mark or sign cited in opposition: National trade mark 'CASTEL BEER' for goods in Class 32

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Appeal dismissed

Pleas in law:

— Breach of Article 76(1) of Regulation No 207/2009;

— Breach of Article 42 of Regulation No 207/2009;

— Breach of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 28 August 2012 — Borrajo Canelo and Others v OHIM

(Case T-381/12)

(2012/C 343/29)

Language in which the application was lodged: Spanish

Parties

Applicants: Ana Borrajo Canelo (Madrid, Spain), Carlos Borrajo Canelo (Madrid), Luis Borrajo Canelo (Madrid) (represented by: A. Gómez López, lawyer)

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

Other party to the proceedings before the Board of Appeal: Technoazúcar (Havana, Cuba)

Form of order sought

— Uphold the action and declare incompatible with Council Regulation (EC) No 40/94 on the Community trade mark (now Regulation (EC) No 207/2009) the decision of the Second Board of Appeal of 21 May 2012 in Case R 2265/2010-2, rejecting the action brought by the applicants for revocation against the decision of the Cancellation Division of 24 September 2010, rejecting the application for revocation of Community trade mark No 4 602 454 PALMA MULATA for goods in Class 33, for 'rum';

— Order the defendant and, as appropriate, the intervener, to pay all the costs of the proceedings.

Pleas in law and main arguments

Registered Community trade mark in respect of which an application for revocation has been made: Nominative mark PALMA MULATA for goods in Class 33 — registered Community trade mark No 4 602 454

Proprietor of the Community trade mark: Technoazúcar

Party applying for revocation of the Community trade mark: The applicants

Decision of the Cancellation Division: Rejection of the application for revocation

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 15(1)(a) of Regulation No 207/2009

Action brought on 6 September 2012 — Schlyter v Commission

(Case T-402/12)

(2012/C 343/30)

Language of the case: English

Parties

Applicant: Carl Schlyter (Linköping, Sweden) (represented by: O. Brouwer and S. Schubert, lawyers)

Defendant: European Commission

Form of order sought

— Annul the refusal of the European Commission to grant full or partial access to its opinion and observations issued in response to notification 2011/673/f relating to the content and submission conditions of annual declarations of nano-particle substances, made by the French Republic under Directive 98/34/EC ([1]);

— Order the European Commission to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the General Court, including the costs of any intervening party.

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 errors of law and manifest errors of assessment and lack of reasoning in the application of Article 4(2) third indent of Regulation (EC) No 1049/2001 ([2]) and Article 6(1) of Regulation (EC) No 1367/2006 ([3]), as:

   — The procedure under Directive 98/34/EC does not fall within the Article 4(2) third indent exception to the general principle of disclosure in the Regulation (EC) No 1049/2001;

   — Article 4(2) third indent of Regulation (EC) No 1049/2001 and Article 6(1) of Regulation (EC) No 1367/2006 were misapplied in finding that disclosure of the requested document would specifically and effectively undermine the Commission's interest in the procedure under Directive 98/34/EC.

2. Second plea in law, alleging error of law, manifest error of assessment and lack of reasoning in the application of the overriding public interest test as required by Article 4(2) third indent of Regulation (EC) No 1049/2001 and Article 6(1) of Regulation (EC) No 1367/2006, as:

   — In this case, Article 6(1) of Regulation (EC) No 1367/2006 reinforces the overriding public interest. The contested decision fails to take into account the overriding public interest in the disclosure of the requested document, and contains an error of law, manifest error of assessment and lack of reasoning in the application of the two legal provision mentioned above.

3. Third plea in law, alleging error of law, manifest error of assessment and lack of reasoning in the application of Article 4(6) of Regulation (EC) No 1049/2001, as:

   — The contested decision lacks any reasoning and is vitiated by a manifest error of assessment in not granting partial access in application of Article 4(6) of Regulation (EC) No 1049/2001.

([1]) Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1998 L 204, p. 37)

([2]) 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)

([3]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ 2006 L 264 p. 13)

Action brought on 11 September 2012 — Intrasoft International v Commission

(Case T-403/12)

(2012/C 343/31)

Language of the case: English

Parties

Applicant: Intrasoft International SA (Luxembourg, Luxembourg) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

— Annul the decision of the Delegation of the European Union to the Republic of Serbia of 10 August 2012 (ref.: RH(2012)3471), as well as the implicit rejection of the applicant's complaint of 10 August 2012 against such decision, so that the applicant will be allowed to participate in the subsequent stages of the tender;

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

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the terms of reference and the principle of good administration. More specifically, the applicant sustains that the additional information-clarifications given by the contracting authority to all tenderers following the tender procedure completed the terms of reference, formed part of the legal framework that governs the tender in question and subsequently was binding on all parties, the contracting authority included. Such terms have in the case at hand been infringed by the defendant.

2. Second plea in law, alleging an infringement of Article 94 of the Financial Regulation ([1]), as:

   — The applicant was excluded from the tendering procedure on the ground of conflict of interest without having been given the opportunity to prove and support evidence that there was not such a case;

   — The administration failed to assess and substantiate that the previous involvement of the applicant in another tender could have an impact on the tender in question.

([1]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248, p. 1)

Action brought on 12 September 2012 — Toshiba Corporation v Commission

(Case T-404/12)

(2012/C 343/32)

Language of the case: English

Parties

Applicant: Toshiba Corporation (Tokyo, Japan) (represented by: J. MacLennan, Solicitor, A. Schulz and S. Sakellariou, lawyers)

Defendant: European Commission

Form of order sought

— Annul the Commission decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear — fines*;

— Alternatively, reduce the fine as the General Court finds appropriate; and, in any event,

— Award the applicant its costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission breached the principle of good administration and the principle of proportionality by prematurely adopting its decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear — fines*, before the European Court of Justice handed down its judgment in Case C-498/11 P *Toshiba Corporation* v *European Commission*.

2. Second plea in law, alleging that the Commission breached Toshiba's rights of defence by not issuing a Statement of Objections before the adoption of the decision of 27 June 2012 in Case COMP/39.966 — *Gas Insulated Switchgear — fines*; and by not addressing in the Letter of Facts an important element of the fine calculation imposed by the said decision.

3. Third plea in law, alleging that the Commission infringed the principle of equal treatment in treating the applicant differently to the European manufacturers of Gas Insulated Switchgear when basing the applicant's fine on TM T&D's starting amount rather than the applicant's turnover;

4. Fourth plea in law, alleging that the Commission failed to provide adequate reasoning when setting TM T&D's starting amount.

5. Fifth plea in law, alleging that the Commission infringed the principle of equal treatment in failing to differentiate in the level of culpability of Toshiba compared to the European manufacturers of Gas Insulated Switchgear.

Action brought on 12 September 2012 — Mitsubishi Electric v Commission

(Case T-409/12)

(2012/C 343/33)

Language of the case: English

Parties

Applicant: Mitsubishi Electric Corp. (Tokyo, Japan) (represented by: R. Denton, J. Vyavaharkar and R. Browne, Solicitors, and K. Haegeman, lawyer)

Defendant: European Commission

Form of order sought

— Annul Commission decision C(2012) 4381 final of 27 June 2012 amending Decision C(2006) 6762 final of 24 January 2007 relating to a proceeding under Article 81 of the EC Treaty (now Article 101 of the Treaty on the Functioning of the European Union) and Article 53 of the EEA Agreement (Case COMP/39.966 — Gas Insulated Switchgear — fines), in so far as it concerns the applicant; or, in the alternative,

— Substantially reduce the fine imposed on the applicant therein; and

— Order the defendant to pay its own costs and the applicant's costs in connection with the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that

   — the Commission failed in its obligation to state reasons in relation to the calculation of the fine and has breached the principle of sound administration.

2. Second plea in law, alleging that

   — the Commission infringed its duty to state reasons in calculating the multiplier applicable to the applicant and has infringed the principles of equal treatment and proportionality in calculating the multiplier.

3. Third plea in law, alleging that

   — the Commission infringed the principle of proportionality in assessing the fine of the applicant in the same way as it assessed the fine to be imposed on the European producers.

4. Fourth plea in law, alleging that

   — the Commission erred in failing to take into account economic and technical evidence when assessing the impact of the applicant's behaviour and in calculating the applicant's fine.

5. Fifth plea in law, alleging that

   — the Commission erred in determining the duration of the alleged cartel.

6. Sixth plea in law, alleging that

   — the Commission erred in assessing the proportions of TM T&D's starting amount to be split between the applicant and another company, thereby infringing the principles of equal treatment and proportionality.

7. Seventh plea in law, alleging that

   — the Commission infringed its duty to state reasons in deciding the proportions of TM T&D's starting amount to be split between the applicant and another company.

8. Eight plea in law, alleging that

   — the Commission erred in its methodology for assigning a starting amount to the applicant for the period prior to the formation of TM T&D, thereby infringing the principles of equal treatment and proportionality.

9. Ninth plea in law, alleging that

   — the Commission infringed its duty to state reasons with respect to its methodology for assigning a starting amount to the applicant for the period prior to the formation of TM T&D.

Action brought on 17 September 2012 — bpost v Commission

(Case T-412/12)

(2012/C 343/34)

Language of the case: English

Parties

Applicant: bpost (Brussels, Belgium) (represented by: D. Geradin, lawyer)

Defendant: European Commission

Form of order sought

— Annul Articles 2, 5, 6 and 7 of the Commission Decision of 25 January 2012 on the measure SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), which was published in the Official Journal of the EU on 29 June 2012 (OJ 2012 L 170, p. 1);

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

Pleas in law and main arguments

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

1. First plea in law, alleging breach of Articles 106(2), 107(1) and (3) TFEU, manifest error of assessment and violation of the principle of equal treatment, by reason of incorrectly concluding that the retail network maintained by bpost was not a distinct Service of General Economic Interest ('SGEI'), and hence, finding that the compensation received from the Belgian State for the retail network constituted overcompensation.

2. Second plea in law, alleging breach of Articles 106(2), 107(1) and 107(3) TFEU and manifest error of assessment, by reason of erroneously concluding that retail network costs, which are induced by the universal service obligation, should not be taken into account when calculating the amount of profits from the reserved area of the universal service that exceed the level of a reasonable profit.

3. Third plea in law, alleging breach of Articles 107 and 106(2) and violation of the principles of proportionality and equal treatment, by reason of mistakenly concluding that net costs of non-mail SGEI's must be offset with all the profits from the reserved area of the universal service, inasmuch as these profits exceed a reasonable profit.

4. Fourth plea in law, alleging breach of Articles 107 and 106(2) TFEU and infringement of the principle of non-retroactivity, by reason of the complete failure to carry forward bpost's undercompensation accumulated over the years 1992-2005 to offset the amounts of bpost's alleged overcompensation over the period 2006-2010.

Action brought on 20 September 2012 — Post Invest Europe v Commission

(Case T-413/12)

(2012/C 343/35)

Language of the case: English

Parties

Applicant: Post Invest Europe Sàrl (Luxembourg, Luxembourg) (represented by: B. van de Walle de Ghelcke and T. Franchoo, lawyers)

Defendant: European Commission

Form of order sought

— Annul Articles 2, 5, 6 and 7 of the Commission Decision of 25 January 2012 on the measure SA.14588 (C 20/2009) implemented by Belgium in favour of De Post-La Poste (now bpost), which was published in the Official Journal of the EU on 29 June 2012 (OJ 2012 L 170, p. 1);

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

Pleas in law and main arguments

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

1. First plea in law, alleging that the Commission's finding that the retail network was not a distinct Service of General Economic Interest ('SGEI') entitled to compensation breaches Articles 106(2), 107(1) and 107(3) TFEU, constitutes a manifest error of assessment and violates the principle of equal treatment.

2. Second plea in law, alleging that the Commission's failure to take into account part of the Universal Service Obligation ('USO') — induced retail network costs when calculating the amount of profits in the USO reserved area, which are above the level of a reasonable profit, breaches Articles 106(2), 107(1) and 107(3) TFEU and constitutes a manifest error of assessment.

3. Third plea in law, alleging that the Commission's finding that net costs of non-mail SGEI's must be offset with the profits from the USO reserved area, inasmuch as they exceed a reasonable profit, breaches Articles 107 and 106(2) TFEU and infringes the principles of proportionality and equal treatment.

4. Fourth plea in law, alleging that breach of Articles 107 and 106(2) TFEU and infringement of the principle of non-retroactivity, by reason of the complete failure to carry forward bpost's undercompensation accumulated over the years 1992-2005 to offset the amounts of bpost's alleged overcompensation over the period 2006-2010.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (First Chamber) of 25 September 2012 — Bermejo Garde v EESC

(Case F-41/10) [1]

(Staff cases — Officials — Psychological harassment — Request for assistance — Right of disclosure — Reassignment — Interests of the service)

(2012/C 343/36)

Language of the case: French

Parties

Applicant: Moises Bermejo Garde (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Economic and Social Committee (EESC) (represented by: M. Echevarría Viñuela, acting as Agent, assisted by B. Wägenbaur, lawyer)

Re:

Application for annulment of a number of decisions terminating the applicant's duties as Head of the Legal Service Unit with immediate effect, reassigning him to the Directorate for Logistics and rejecting his formal request for assistance, and application for damages

Operative part of the judgment

The Tribunal:

1. *dismisses the action;*

2. *orders each party to bear its own costs.*

[1] OJ C 209, 31.7.2010, p. 55.

Judgment of the Civil Service Tribunal (First Chamber) of 25 September 2012 — Bermejo Garde v EESC

(Case F-51/10) [1]

(Staff cases — Officials — Recruitment — Vacancy notice — Act adversely affecting an official — Legal interest in bringing proceedings — Language requirements — Authority competent to adopt a vacancy notice — Bureau of the EESC)

(2012/C 343/37)

Language of the case: French

Parties

Applicant: Moises Bermejo Garde (Brussels, Belgium) (represented by: L. Levi, lawyer)

Defendant: European Economic and Social Committee (EESC) (represented by: M. Lernhart, acting as Agent, assisted by B. Wägenbaur, lawyer)

Re:

First, application for annulment of vacancy notice EESC No 43/09 seeking to fill the post of Director of the Directorate of General Affairs and of all the decisions taken on the basis of that vacancy notice. Secondly, application to order the defendant to pay the applicant an amount in respect of damages.

Operative part of the judgment

The Tribunal:

1. *annuls vacancy notice No 43/09 published with a view to filling the post of Director of the Directorate of General Affairs of the European Economic and Social Committee;*

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

3. *orders the European Economic and Social Committee to bear its own costs and to pay those incurred by Mr Bermejo Garde.*

[1] OJ C 246, 11.9.2010, p. 42.

Judgment of the Civil Service Tribunal (First Chamber) of 18 September 2012 — Allgeier v FRA

(Case F-58/10) [1]

(Civil service — Duty of assistance — Article 24 of the Staff Regulations — Psychological harassment — Administrative inquiry)

(2012/C 343/38)

Language of the case: English

Parties

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

Defendant: European Union Agency for Fundamental Rights (FRA) (represented by: M. Kjærum, acting as Agent, assisted by B. Wägenbaur, lawyer)

Re:

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

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 16 October 2009 of the European Union Agency for Fundamental Rights;*

2. *Orders the European Union Agency for Fundamental Rights to pay Mr Allgeier the sum of EUR 5 000;*

3. *Dismisses the remainder of the application;*

4. *Orders the European Union Agency for Fundamental Rights to bear its own costs and to pay the costs incurred by Mr Allgeier.*

([1]) OJ C 260, 25.9.2010, p. 27.

Action brought on 6 September 2012 — ZZ v Commission

(Case F-93/12)

(2012/C 343/39)

Language of the case: French

Parties

Applicant: ZZ (represented by: M.-A. Lucas, lawyer)

Defendant: European Commission

Subject-matter and description of the proceedings

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

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision of the Director of the OIL of 1 December 2011 not to renew the applicant's appointment, which therefore ended on 15 January 2012;

— Annul in so far as necessary the decision confirming that decision stemming from the Director's letter of 6 February 2012;

— Order the Commission to pay to him, as compensation for the damage to his career as from 15 January to 30 June 2012, a sum corresponding to the difference between the net remuneration which would have been payable to him at the OIL and the net unemployment benefit which he received, provisionally assessed at EUR 11 309, and to pay on his behalf to the Community pension scheme the contributions corresponding to the remuneration which he should have received;

— Order the applicant's appointment at the OIL to be renewed for an indefinite period, with effect from the date on which his present appointment comes to an end;

— In the alternative, order the Commission to pay to him, as compensation for the damage to his career which he would otherwise suffer as from that date, the difference between the remuneration and the pension rights which he would have acquired if his appointment at the OIL had been renewed for an indefinite period and the remuneration or income which serves as a substitute for it and the pension which he might otherwise have received;

— Order the Commission to pay to him a sum of EUR 5 000 as compensation for the non-material damage which resulted from the fact that his appointment at the OIL was not renewed;

— Order the Commission to pay to him a sum of EUR 5 000 as compensation for the non-material damage caused him by the unlawful nature of his evaluation report for 2010;

— Order the Commission to pay the costs.

Action brought on 11 September 2012 — ZZ v Commission

(Case F-96/12)

(2012/C 343/40)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi and A. Blot, lawyers)

Defendant: European Commission

Subject-matter and description of the proceedings

Annulment of the decision of the selection board EPSO/AD/207/11 upholding the decision not to include the applicant on the reserve list on the ground that the applicant does not fulfil certain specific criteria for admission to that competition and a claim for damages.

Forms of order sought

— annul the decision of the selection board of EPSO/AD/206/11 (AD5) and EPSO/AD/207/11 (AD 7) dated 1 June 2012 upholding the decision of 9 February 2012 not to place the applicant on the reserve list of the competition on the ground that the applicant does not fulfil certain specific criteria for admission;

— so far as necessary, annul the decision of the selection board of EPSO/AD/206/11 (AD5) and EPSO/AD/207/l1 (AD 7) dated 9 February 2012;

— grant the applicant the sum fixed *ex aequo et bono* and provisionally EUR 3 000 by way of non-pecuniary damages;

— order the Commission to pay the costs.

Action brought on 17 September 2012 — ZZ v Council

(Case F-98/12)

(2012/C 343/41)

Language of the case: French

Parties

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

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decisions not to promote the applicant to Grade AD12 for the 2008 and 2009 promotion exercises.

Forms of order sought

— annul the decisions of the Appointing Authority not to promote the applicant to Grade AD12 for the 2008 and 2009 promotion exercises;

— so far as necessary, annul the decision of the Appointing Authority of 6 June 2012 rejecting the applicant's complaint directed against his non-promotion to AD12 for the 2008 and 2009 promotion exercises;

— order the Council to pay the costs.

Action brought on 18 September 2012 — ZZ v Committee of the Regions

(Case F-99/12)

(2012/C 343/42)

Language of the case: French

Parties

Applicant: ZZ (represented by: L. Levi, A. Blot, avocats)

Defendant: Committee of the Regions

Subject-matter and description of the proceedings

Annulment of the decision of the Committee of the Regions rejecting the applicant's request that the calculation of his pension rights not be made under the new GIP.

Forms of order sought

— by way of principal claim, annul the decision of the Committee of the Regions of 1 December 2011 rejecting the applicant's request of 13 July 2011, as completed on 16 August 2011;

— so far as necessary, annul the decision dated 8 June 2012 expressly rejecting the applicant's claim dated 10 February 2012;

— in the alternative, recognise the non-pecuniary loss suffered and order the defendant to pay the amount of EUR 20 000;

— order the Committee of the Regions to pay the costs.

CORRIGENDA

Corrigendum to the notice in the Official Journal in Case T-326/12

(Official Journal of the European Union C 311 of 13 October 2012, p. 8)

(2012/C 343/43)

The OJ notice in Case T-326/12 *Al Toun and Al Toun Group* v *Council* should read as follows:

Action brought on 19 July 2012 — *Al Toun and Al Toun Group* v *Council*

(Case T-326/12)

(2012/C 311/10)

Language of the case: Bulgarian

Parties

Applicants: Salim Georges Al Toun and Al Toun Group (represented by: Stanislav Koev, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded in its entirety, and grant all the pleas raised in the application;

— allow the present action to be examined under the accelerated procedure;

— declare that the contested measures may be annulled in part, since the part of the measures to be annulled is removable from the measures as a whole;

— annul Council Decision 2011/782/CFSP of 1 December 2011 concerning restrictive measures against Syria, and Council Implementing Decision 2012/256/CFSP of 14 May 2012, in so far as Mr Salim Al Toun and the Al Toun Group have been added to the list set out in the annex to Decision 2011/782/CFSP;

— annul Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and Council Implementing Regulation (EU) No 410/2012 of 14 May 2012, in so far as Mr Salim Al Toun and the Al Toun Group have been added to the list set out in Annex II to Council Regulation (EU) No 36/2012;

— order the Council to pay all of the applicants' costs and legal fees related to their defence in the present proceedings.

Pleas in law and main arguments

In support of their action, the applicants rely on six pleas in law.

1. By their first plea in law, the applicants allege a serious infringement of the rights of the defence and of the right to a fair hearing, since the applicants were not warned about the contested measures, which they learned of via the media, or presented with any conclusive evidence or reference points to justify their inclusion on the list of persons to be fined. In that regard, the burden of proof is on the Council, which is required to justify the imposition of the restrictive measures.

2. By their second plea in law, the applicants allege an infringement of the duty to state reasons. The Council merely made unfounded claims in the contested measures and infringed that duty, which is imposed on the institutions of the European Union by Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 296 TFEU and Article 41 of the Charter of Fundamental Rights of the European Union. In that regard, the applicants submit that the Council relied on the imprecise notion of participation in the regime, of which there is no definition in the Council measures regarding the situation in Syria. In the light of the lack of clear and precise grounds on the part of the Council, the General Court is not able to review the lawfulness of the contested measures.

3. By their third plea in law, the applicants allege an infringement of the right to effective legal protection, since the infringement of the duty to state reasons prevented them from preparing an effective defence, as provided for in Articles 6 and 13 of the European Convention for the protection of Human Rights and Fundamental Freedoms, Article 215 TFEU, and Articles 41 and 47 of the Charter of Fundamental Rights of the European Union.

4. By their fourth plea in law, the applicants allege an error of assessment on the part of the Council, since the applicant, Mr Salim Al Toun, was wrongly identified as a Venezuelan citizen, which is not the case, and the Al Toun Group has never participated, since its creation, in transactions related to oil or oil products, contrary to what is stated in the contested measures.

5. By their fifth plea in law, the applicants allege an infringement of the right to property, of the principle of proportionality and of the freedom to pursue an economic activity, laid down in Article 1 of the additional protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 17 of the Charter of Fundamental Rights of the European Union, since, by adopting Implementing Decision 2012/256/CFSP, and Implementing Regulation (EU) No 410/2012, the Council unduly deprived the applicants of the possibility of making peaceful use of their property, which puts their existence and their physical survival at risk.

6. By their sixth plea in law, the applicants allege a flagrant infringement of the right to the protection of the reputation, provided for in Articles 8 and 10(2) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, since the inclusion of the applicants' names in the contested measures has unlawfully ruined their reputation in Syrian society, among their friends, in the religious community and among trading partners.

European Union Civil Service Tribunal

2012/C 343/36 Case F-41/10: Judgment of the Civil Service Tribunal (First Chamber) of 25 September 2012 — Bermejo Garde v EESC (Staff cases — Officials — Psychological harassment — Request for assistance — Right of disclosure — Reassignment — Interests of the service) 22

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