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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Budai Központi Kerületi Bíróság (Hungary) lodged on 24 January 2017 — GT v HS

(Case C-38/17)

(2017/C 178/02)

Language of the case: Hungarian

Referring court

Budai Központi Kerületi Bíróság

Parties to the main proceedings

Applicant: GT

Defendant: HS

Questions referred

Do:

the European Union's competence to ensure a high level of protection for consumers,

the fundamental principles of Union law of equality before the law, the right to an effective remedy and to a fair trial,

several elements of the recitals of Directive 93/13/[EEC] ([1]) ('… whereas the two Community programmes for a consumer protection and information policy underlined the importance of safeguarding consumers in the matter of unfair terms of contract; whereas this protection ought to be provided by laws and regulations which are either harmonized at Community level or adopted directly at that level; whereas in accordance with the principle laid down under the heading "Protection of the economic interests of the consumers", as stated in those programmes: "acquirers of goods and services should be protected against the abuse of power by the seller or supplier, in particular against one-sided standard contracts and the unfair exclusion of essential rights in contracts"; whereas more effective protection of the consumer can be achieved by adopting uniform rules of law in the matter of unfair terms; whereas those rules should apply to all contracts concluded between sellers or suppliers and consumers; whereas as a result inter alia contracts relating to employment, contracts relating to succession rights, contracts relating to rights under family law and contracts relating to the incorporation and organization of companies or partnership contracts must be excluded from this Directive; whereas the consumer must receive equal protection under contracts concluded by word of mouth and written contracts regardless, in the latter case, of whether the terms of the contract are contained in one or more documents; whereas, however, as they now stand, national laws allow only partial harmonization to be envisaged; whereas, in particular, only contractual terms which have not been individually negotiated are covered by this Directive; whereas Member States should have the option, with due regard for the Treaty, to afford consumers a higher level of protection through national provisions that are more stringent than those of this Directive; … whereas contracts should be drafted in plain, intelligible language, the consumer should actually be given an opportunity to examine all the terms and, if in doubt, the interpretation most favourable to the consumer should prevail; …'), and

Article 4(2) and Article 5 of Directive 93/13/[EEC]

preclude binding national case-law that a) and/or b)

a) imposes no obligation on the counterparty of the consumer, as a condition of validity of the contract, to enable the consumer, before entering into a contract, to read the terms of the contract, written in clear and intelligible language, which form the main subject matter of that contract, including the exchange rate applicable to payments for a currency loan contract, in order to prevent the invalidity of the contract;

b) enables the counterparty of the consumer to communicate (in a specific document, for example), the terms of the contract, written in clear and intelligible language, which form the main subject matter of that contract, including the exchange rate applicable to payments for a currency loan contract, only at a time when the consumer has already irrevocably committed himself to performing the contract, without this circumstance alone being a ground for the invalidity of the contract?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 1993, p. 29).

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 14 February 2017 — Gmalieva s.r.o. and Others v Landespolizeidirektion Oberösterreich

(Case C-79/17)

(2017/C 178/03)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: Gmalieva s.r.o., Celik KG, PBW GmbH, Antoaneta Claudia Gruber, Play For Me GmbH, Haydar Demir

Defendant authority: Landespolizeidirektion Oberösterreich

Questions referred

1. Is a national statutory monopoly scheme in respect of games of chance to be regarded as coherent, within the meaning of Article 56 TFEU et seq., where

   — on the basis that

   (a) the facts can be established and assessed by reference to the evidence provided by public bodies and private individuals who are parties to the proceedings, as well as evidence that is a matter of public knowledge (see, in that regard, Case C-685/15); and

   (b) the legal analysis of other national courts which did not base themselves on an autonomous assessment of coherence is not binding (see, in that regard, Case C-589/16) —

   judicial proceedings which, taking account of the abovementioned provisos, are thus presumed to be in compliance with the principle of fairness under Article 6 ECHR and Article 47 of the Charter of Fundamental Rights of the European Union, established the essential points of the context to which that statutory scheme belongs by finding that:

   — gambling addiction does not represent a societal problem justifying State intervention;

   — the playing of prohibited games of chance does not appear to be a criminal act, but a mere (albeit frequent) cause of trouble involving police involvement in an administrative context;

— annual State income from games of chance exceeds EUR 500 million (= 0,4 % of the overall State budget); and

— the advertising measures undertaken by licensees also seek principally to entice persons who have not previously played games of chance to do so?

2. If Question 1 is answered in the affirmative: is such a scheme, which does not explicitly establish in law the objectives that it pursues and does not require the State to prove that those objectives have in fact been achieved, but which shifts the task of preparing and verifying the essential criteria of coherence onto the national courts, in such a way that the requirement of a fair trial under Article 6(1) of the ECHR and Article 47 of the Charter of Fundamental Rights of the European Union is ultimately not guaranteed with certainty, to be viewed as coherent within the meaning of Article 56 TFEU et seq.?

3. If Question 1 and/or Question 2 is/are answered in the affirmative: is such a scheme to be regarded as proportionate within the meaning of Article 56 TFEU et seq. in light of the broad, statutorily regulated, powers of intervention enjoyed by the authorities, which are not subject to any prior authorisation or review by a judicial body?

4. If Questions 1, 2 and 3 are answered in the affirmative: is such a scheme to be regarded as proportionate within the meaning of Article 56 TFEU et seq. in view of the fact that the mere definition of strict conditions of access which do not, at the same time, restrict the number of licences to be granted would result in comparatively less interference with the freedom to provide services?

5. If one of the preceding questions is answered in the negative: must a national court, which has ruled that the monopoly scheme of the GSpG (Glücksspielgesetz; the Law on Gambling) is not in accordance with EU law, not only find, on that basis, that the interventionist measures taken in the proceedings before it are unlawful, but also, of its own motion, in the exercise of its own jurisdictional powers (for example, by reopening the proceedings), reverse the legal sanctions (such as, for instance, administrative penalties) which have already become final?

Appeal brought on 15 February 2017 by Société des produits Nestlé SA against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-112/13: Mondelez UK Holdings & Services Ltd v European Union Intellectual Property Office

(Case C-84/17 P)

(2017/C 178/04)

Language of the case: English

Parties

Appellant: Société des produits Nestlé SA (represented by: G.S.P. Vos, advocaat)

Other parties to the proceedings: Mondelez UK Holdings & Services Ltd, European Union Intellectual Property Office (EUIPO)

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of the European Union of 15 December 2016, case T-112/13, on that basis that the General Court infringed article 7(3) and 52(2) of the European Union Trade Mark Regulation ('EUTMR') ([1]); and

— order the respondent, applicant before the General Court, Mondelez UK Holdings & Services Ltd, to pay the costs.

Pleas in law and main arguments

Nestlé appeals the General Court's judgment on the ground that the General Court infringed article 7(3) and article 52(2) of Regulation (EU) No. 207/2009 amended by Regulation (EU) No. 2015/2424 ([2]), also known as EUTMR.

More specifically, Nestlé's appeal is directed against the decision of the General Court that concerning the extent of the territory in which it is necessary to establish distinctive character acquired through use of a mark, the distinctive character acquired through use of that mark must be shown throughout the territory of the European Union, that is, in all the Member States concerned.

(1) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009, L 78, p. 1).
(2) Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 2015, L 341, p. 21).

Appeal brought on 15 February 2017 by Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd against the judgment of the General Court (Fifth Chamber) delivered on 15 December 2016 in Case T-112/13: Mondelez UK Holdings & Services Ltd v European Union Intellectual Property Office, Société des produits Nestlé SA

(Case C-85/17 P)

(2017/C 178/05)

Language of the case: English

Parties

Appellant: Mondelez UK Holdings & Services Ltd, formerly Cadbury Holdings Ltd (represented by: T. Mitcheson QC, Barrister, P. Walsh, J. Blum and S. Dunstan, Solicitors)

Other parties to the proceedings: European Union Intellectual Property Office, Société des produits Nestlé SA

Form of order sought

The appellant claims that the Court should:

— annul the following parts of the General Court's decision in Case T-112/13:

1) The reasoning regarding the second part of the first plea in law set out in paragraphs 37-44;

2) The reasoning regarding the first part of the first plea in law set out in paragraphs 58-64;

3) The reasoning regarding the third part of the first plea in law at paragraphs 78-111; and

4) The reasoning regarding the fourth part at paragraphs 144-169 and the portion of paragraph 177 that reads '*Although it had been established that the contested trade mark had acquired distinctive character through use in Denmark, Germany, Spain, France, Italy, the Netherlands, Austria, Finland, Sweden and the United Kingdom*'.

Pleas in law and main arguments

1) The Court erred in law in relation to its reasoning regarding the second part of the first plea in law set out in paragraphs 37-44. The second part relates to the use of the Mark in respect of all of the goods for which it was registered. The General Court fell into error when it found that use in trade in respect of a chocolate bar consisting of four trapezoid shaped fingers could be classified as a sweet or biscuit.

2) The Court erred in law in relation to its reasoning regarding the first part of the first plea in law set out in paragraphs 58-64. The first part relates to use of the Mark in the form in which it was registered. Mondelez contends the Mark has not been used at all in the form in which it is registered. The General Court applied the wrong legal tests in: (i) not putting sufficient weight on its finding that the bar was a shape which naturally comes into the mind for the goods in question; and (ii) relying on a 'spontaneous and immediate association' made between the shape with the word KIT KAT contrary to the guidance in Case C-215/14 Société des Produits Nestlé, EU:C:2015:604 ('Case C-215/14').

3) The Court erred in law in relation to its reasoning regarding the third part of the first plea in law set out in paragraphs 78-111. The third part relates to lack of use of the Mark as an indicator of origin and the evidence provided in that regard. The General Court applied the wrong legal test in relying on the findings of recognition or association. The correct approach is to ask whether the relevant class of persons perceive the goods or services designated exclusively by the mark applied for, as opposed to any other mark which might also be present, as originating from a particular company in accordance with the CJEU's reasoning in Case C-215/14.

4) The Court erred in law in relation to its reasoning regarding the fourth part of the first plea in law set out in paragraphs 144-169 and in the portion of paragraph 177 that reads 'Although it had been established that the contested trade mark had acquired distinctive character through use in Denmark, Germany, Spain, France, Italy, the Netherlands, Austria, Finland, Sweden and the United Kingdom'. The fourth part relates to the lack of proof of distinctive character acquired through use of the Mark throughout the European Union. The General Court was correct to find that Nestlé had not demonstrated that the Mark had acquired distinctive character throughout the whole of the EU and Mondelez does not wish to disturb that decision. However, Mondelez does not accept that Nestlé has at any time established acquired distinctiveness for the Goods in 10 Member States of the EU or at all. The General Court has erred in applying the wrong legal test in respect of each Member State in question as neither recognition, attribution nor association equate to perception by the relevant consumers of the Mark as denoting origin, as required by the test laid down by the CJEU in Case C-215/14.

Request for a preliminary ruling from the Cour de cassation (France) lodged on 6 March 2017 — Administration des douanes et droits indirects, Établissement national des produits de l'agriculture et de la mer (FranceAgriMer) v Hubert Clergeau, Jean-Luc Labrousse, Jean-Jacques Berthellemy, Alain Bouchet, Jean-Pierre Dubois, Marcel Géry, Jean-Paul Matrat, Jean-Pierre Paziot, Patrice Raillot

(Case C-115/17)

(2017/C 178/06)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicants: Administration des douanes et droits indirects, Établissement national des produits de l'agriculture et de la mer (FranceAgriMer)

Defendants: Hubert Clergeau, Jean-Luc Labrousse, Jean-Jacques Berthellemy, Alain Bouchet, Jean-Pierre Dubois, Marcel Géry, Jean-Paul Matrat, Jean-Pierre Paziot, Patrice Raillot

Question referred

Is Article 49 of the Charter of Fundamental Rights to be interpreted as precluding a situation in which a person is convicted on the ground that he obtained export refunds, to which he was not entitled, by means of deceitful practices or the making of false declarations as to the nature of the goods in respect of which the refunds were requested, although, as a result of changes in the rules which occurred subsequent to the facts of the case, the goods that were in fact exported by that person have since become eligible for those refunds?

Request for a preliminary ruling from the Amtsgericht Hamburg (Germany) lodged on 7 March 2017 — Reinhard Nagel v Swiss International Air Lines AG

(Case C-116/17)

(2017/C 178/07)

Language of the case: German

Referring court

Amtsgericht Hamburg

Parties to the main proceedings

Applicant: Reinhard Nagel

Defendant: Swiss International Air Lines AG

Questions referred

1. Can an air carrier make the deduction in all cases or is this dependent on the extent to which national law permits it or the court regards it as appropriate?

2. In so far as national law is applicable or the court is to exercise its discretion: is compensation under Article 7 of the regulation ([1]) intended to redress only the inconvenience and loss of time suffered by passengers as a result of the cancellation, or is it also intended to address material damage?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 6 March 2017 — Liviu Petru Lupean, Oana Andreea Lupean v OTP BAAK NYRT, acting through OTPBANK SA, acting through Sucursala Sibiu, OTP BAAK NYRT, acting through OTPBANK SA

(Case C-119/17)

(2017/C 178/08)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicants: Liviu Petru Lupean, Oana Andreea Lupean

Defendants: OTP BAAK NYRT, acting through OTPBANK SA, acting through Sucursala Sibiu, OTP BAAK NYRT, acting through OTPBANK SA

Questions referred

1. May Article 4(1) of Council Directive 93/[1]3/EEC ([1]) of 5 April 1993 on unfair terms in consumer contracts, together with the principle *in dubio pro consumer* reflected in the second sentence of Article 5(1) of the directive, and the case-law of the European Union, be interpreted as meaning that the terms of a bank loan agreement:

   — which grants the borrower a sum of money expressed in a certain curruncy (foreign currency) and requires the borrower to repay the loan in the same currency (foreign currency) but it is apparent from the circumstances attending the conclusion and execution of the agreement that the funds were in fact provided to the borrower in an entirely different currency and that the accounting currency is used only virtually and for the purposes of calculation;

   — under which the entire risk of appreciation of the external and/or internal value of the accounting currency used virtually (the foreign currency) is borne by the borrower (consumer), even though the consumer drew down a different payment currency, being the currency actually used;

   — which does not explain clearly how the exchange mechanism for the accounting currency used virtually actually works, that is, in such a way that the consumer is able to assess, on the basis of clear and intelligible criteria, the financial consequences of signing the agreement;

— which imposes a pecuniary obligation on the consumer to pay, in respect of loan instalments, sums arising from the difference between the instalments calculated in the accounting currency made available virtually to the borrower and the instalments calculated in the payment currency actually used:

may be unfair?

2. If the first question is answered in the affirmative, what are the criteria which the national court must apply for the purpose of assessing whether such terms may be unfair, with reference to the factual situation described in the first question?

3. May the terms described in the first question be regarded as being unrelated to the main subject matter of the loan agreement?

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ L 95, 1993, p. 29).

Request for a preliminary ruling from the Vergabekammer Südbayern (Germany) lodged on 10 March 2017 — Vossloh Laeis GmbH v Stadtwerke München GmbH

(Case C-124/17)

(2017/C 178/09)

Language of the case: German

Referring court

Vergabekammer Südbayern

Parties to the main proceedings

Applicant: Vossloh Laeis GmbH

Defendant: Stadtwerke München GmbH

Questions referred

1. Is legislation of a Member State that makes successful voluntary remedial measures (Selbstreinigung) by an economic operator subject to the condition that it clarifies the facts and circumstances relating to the criminal offence or the misconduct and the damage caused by it in a comprehensive manner by actively cooperating not only with the investigating authorities, but also with the contracting authority, compatible with the provisions of Article 80 of Directive 2014/25/EU (1) in conjunction with the second subparagraph of Article 57(6) of Directive 2014/24/EU (2)?

2. If Question (a) is answered in the negative: Must the second subparagraph of Article 57(6) of Directive 2014/24/EU be interpreted, in that context, as meaning that the relevant economic operator is, for there to be successful voluntary remedial measures, in any event required to clarify the facts for the contracting authority to such an extent that the latter may assess whether the measures taken (technical, organisational and personnel measures and compensation for damage) are appropriate and sufficient?

3. For the optional grounds for exclusion laid down in Article 57(4) of Directive 2014/24/EU, the maximum period or time limit of exclusion is, pursuant to Article 57(7) of Directive 2014/24/EU, three years from the date of the relevant event. Is the fulfilment of the optional grounds for exclusion laid down in Article 57(4) of Directive 2014/24/EU to be understood as the relevant event or is the relevant date that on which the contracting entity has certain and reliable knowledge of the existence of the ground for exclusion?

4. Accordingly, for the fulfilment of the conditions for exclusion under Article [57](4)(d) of Directive 2014/24/EU through participation of an economic operator in a cartel, is the relevant event within the meaning of Article [57](7) of Directive 2014/24/EU the termination of participation in the cartel or the contracting entity's acquisition of certain and reliable knowledge of the participation in the cartel?

([1]) Directive 2014/25/EU of the European Parliament and of the Council of 26 February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC (OJ 2014 L 94, p. 243).

([2]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium) lodged on 20 March 2017 — Criminal proceedings against Van Gennip BVBA and Others

(Case C-137/17)

(2017/C 178/10)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Party/parties to the main proceedings

Van Gennip BVBA, Antonius Johannes Maria ten Velde, Original BVBA, Antonius Cornelius Ignatius Maria van der Schoot

Questions referred

1. Do the following infringements of the Belgian legislation on pyrotechnic articles qualify as 'serious infringements' within the meaning of Article 45 of Directive 2013/29/EU ([1]) of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles:

   (a) the sale of pyrotechnic articles in the amount of 2.666 kg of pyrotechnic composition, being an infringement of Articles 265(7) and 257 of the Royal Decree of 23 September 1958 laying down general rules on the manufacture, storage, detention, sale, transport and use of explosives, which prohibits the sale of pyrotechnic articles in quantities exceeding 1 kg of pyrotechnic composition, if the consumer is not in possession an individually-obtained administrative authorisation to hold a larger quantity of pyrotechnic articles;

   (b) the exceeding of the determined storage limit and the non-compliance with the storage locations indicated in a federal fireworks authorisation, even though a regional environmental permit had already been issued for the storage of the actual higher quantities in question, in the locations in question;

   (c) the very temporary storage of extremely small quantities of pyrotechnic articles in various locations not specifically authorised for storage, on the premises of an establishment for the retail sale of pyrotechnic articles, possessing both a federal fireworks authorisation and a regional environmental permit?

2. Does the principle of the free movement of pyrotechnic articles, as laid down in Article 6(1) of Directive 2007/23/EC ([2]) of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles (now Article 4(1) of Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles), read in conjunction, if necessary, with Article 10 of Directive 2006/123/EC ([3]) of the European Parliament and of the Council of 12 December 2006 on services in the internal market, preclude national legislation which makes the storage of directive-compliant pyrotechnic articles associated with the retail trade subject to the twofold requirement of possessing (i) an authorisation granted pursuant to the legislation governing the manufacture, storage, holding, sale, transport and use of explosives, and (ii) an authorisation granted under the legislation on environmental authorisations for nuisance-causing structures, when both authorisation regimes essentially have the same objective (the preventive assessment of safety risks), and one of those two authorisation regimes (in this case, that relating to explosives) sets a (very) low maximum threshold for the storage of party fireworks (in the amount of 50 kg of pyrotechnic composition (that is, the active substance))?

3. Does the principle of the free movement of pyrotechnic articles, as laid down in Article 4(1) of Directive 2013/29/EU of the European Parliament and of the Council of 12 June 2013 on the harmonisation of the laws of the Member States relating to the making available on the market of pyrotechnic articles and Article 6(2) of Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles (read together, if necessary, with Articles 34, 35 and 36 of the Treaty on the Functioning of the European Union), in conjunction with the principle of proportionality, preclude national legislation which prohibits party fireworks (fireworks from categories 2 and 3 [as set out in Article 3(1)(a)] of Directive 2007/23/EC) containing more than 1 kg of pyrotechnic composition from being held or used by, or sold to, consumers?

([1]) OJ 2013 L 178, p. 27.
([2]) OJ 2007 L 154, p. 1.
([3]) OJ 2006 L 376, p. 36.

Reference for a preliminary ruling from the Supreme Court of the United Kingdom made on 27 March 2017 — Commissioners for Her Majesty's Revenue and Customs v Volkswagen Financial Services (UK) Ltd

(Case C-153/17)

(2017/C 178/11)

Language of the case: English

Referring court

Supreme Court of the United Kingdom

Parties to the main proceedings

Applicant: Commissioners for Her Majesty's Revenue and Customs

Defendant: Volkswagen Financial Services (UK) Ltd

Questions referred

1. Where general overhead costs attributed to hire purchase transactions (which consist of exempt supplies of finance and taxable supplies of cars), have been incorporated only into the price of the taxable person's exempt supplies of finance, does the taxable person have a right to deduct any of the input tax on those costs?

2. What is the proper interpretation of paragraph 31 of Case C-93/98, Midland Bank, and specifically the statement that overhead costs 'are part of the taxable person's general costs and are, as such, components of the price of an undertaking's products'?

   In particular:

   a) Should this passage be interpreted to mean that a Member State must always attribute some input tax to every supply in any special method adopted under Article 173(2)(c) of the Directive ([1])?

   b) Is this the case even if the factual circumstances are that the overhead costs are not incorporated in the price of taxable supplies made by the undertaking?

3. Does the fact that the overhead costs have been actually used, at least to some extent, in making taxable supplies of cars,

   a) entail that some proportion of the input tax on those costs must be deductible?

   b) Is this the case even if the factual circumstances are that overhead costs are not incorporated in the price of the taxable supplies of cars?

4. Can it be legitimate in principle to ignore the taxable supplies of cars (or their value) for the purposes of arriving at a special method under Article 173(2)(c) of the Directive?

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006, L 347, p. 1).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 1 March 2017 — Raoul Thybaut, Johnny De Coster and Frédéric Romain v Région wallonne

(Case C-160/17)

(2017/C 178/12)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Raoul Thybaut, Johnny De Coster and Frédéric Romain

Defendant: Région wallonne

Question referred

Is Article 2(a) of Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 on the assessment of the effects of certain plans and programmes on the environment (1) to be interpreted as including in the concept of plan or programme an area prescribed by a legislative provision and adopted by a regional authority:

— the sole purpose of which is to determine the boundary of a geographical area in which an urban development plan is capable of being carried out, it being understood that this plan, which must pursue a defined objective — in this case concerning renovation and development of urban functions requiring the creation, modification, extension, removal or overhang of roads and public spaces — justifies the adoption of the area, which in turn entails acceptance of the principle of this plan, but which must still be subject to planning permission which requires the assessment of effects; and

— which has the effect, from a procedural point of view, of allowing planning permission applications for measures or works located in this area to benefit from a special procedure, it being understood that the planning rules that were applicable to the land concerned before adoption of the area remain applicable, but that the use of this procedure may allow derogation from these rules to be obtained more easily; and

— which enjoys a presumption of public interest for expropriations within the framework of an accompanying expropriation plan?

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

Reference for a preliminary ruling from Supreme Court (Ireland) made on 3 April 2017 — Edel Grace, Peter Sweetman v An Bord Pleanala

(Case C-164/17)

(2017/C 178/13)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicants: Edel Grace, Peter Sweetman

Defendant: An Bord Pleanala

Question referred

Where

a) a protected site has as its essential purpose the provision of habitat for a specified species

b) the nature of the habitat which is beneficial for that species means that the part of the site which is beneficial will necessarily alter over time, and

c) as part of a proposed development a management plan for the site as a whole (including changes to the management of parts of the site not directly affected by the development itself) is to be put in place which is designed to ensure that, at any given time, the amount of the site suitable as habitat as aforesaid is not reduced and indeed may be enhanced; but

d) some of the site will, for the lifetime of the development project, be excluded from having the potential to provide appropriate habitat,

can such measures as are described in (c) properly be regarded as mitigatory?

Reference for a preliminary ruling from the Supreme Court (Ireland) made on 3 April 2017 — Volkmar Klohn v An Bord Pleanála

(Case C-167/17)

(2017/C 178/14)

Language of the case: English

Referring court

Supreme Court

Parties to the main proceedings

Applicant: Volkmar Klohn

Defendant: An Bord Pleanála

Question referred

1. Can the 'not prohibitively expensive' provisions of Art. 10a of the Public Participation Directive potentially have any application in a case such as the instant case where the development consent challenged in the proceedings was granted prior to the latest date for transposition of that directive and where the proceedings challenging the relevant development consent were also commenced prior to that date? If so have the 'not prohibitively expensive' provisions of the Public Participation Directive potential application to all costs incurred in the proceedings or only to costs incurred after the latest date for transposition?

2. Is a national court which enjoys a discretion concerning the award of costs against an unsuccessful party, in the absence of any specific measure having been adopted by the member state in question for the purposes of transposing Art. 10a of the Public Participation Directive, obliged, when considering an order for costs in proceedings to which that provision applies, to ensure that any order made does not render the proceedings 'prohibitively expensive' either because the relevant provisions are directly effective or because the court of the member state concerned is required to interpret its national procedural law in a manner, to the fullest extent possible, which fulfils the objectives of Article 10a?

3. Where an order for costs is unqualified and would, by virtue of the absence of any appeal, be regarded as final and conclusive as a matter of national law, does Union law require that either

   a) a Taxing Master charged in accordance with national law with the task of quantifying the amount of costs reasonably incurred by the successful party; or

b) a court asked to review a decision of such a Taxing Master nonetheless have an obligation to depart from otherwise applicable measures of national law and determine the amount of costs to be awarded in such a way as ensures that the costs so awarded do not render the proceedings prohibitively expensive?

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 6 April 2017 — X, other party: Belastingdienst/Toeslagen

(Case C-175/17)

(2017/C 178/15)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: X

Defendant: Belastingdienst/Toeslagen

Questions referred

1. Must Article 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98; 'the Return Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that under EU law, if national law makes provision to that effect, in proceedings challenging a decision which includes a return decision within the meaning of Article 3(4) of Directive 2008/115/EC, the legal remedy of an appeal has automatic suspensory effect where the third-country national claims that enforcement of the return decision would result in a serious risk of infringement of the principle of non-refoulement? In other words, in such a case, should the expulsion of the third-country national concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the third-country national concerned being required to submit a separate request to that effect?

2. Must Article 39 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (OJ 2005 L 326, p. 13; 'the Procedures Directive'), read in conjunction with Articles 4, 18, 19(2) and 47 of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that, under EU law, if national law makes provision to that effect, in proceedings relating to the rejection of an application for asylum within the meaning of Article 2 of Directive 2005/85/EC, the legal remedy of an appeal has automatic suspensory effect? In other words, in such a case, should the expulsion of the asylum-seeker concerned be suspended during the period for lodging an appeal, or, if an appeal has been lodged, until a decision has been delivered on that appeal, without the asylum-seeker concerned being required to submit a separate request to that effect?

GENERAL COURT

Judgment of the General Court of 24 April 2017 — HF v Parliament

(Case T-570/16) ([1])

(Civil Service — Member of the auxiliary contract staff — Article 24 of the Staff Regulations — Request for assistance — Article 12a of the Staff Regulations — Psychological harassment — Article 90(1) of the Staff Regulations — Statutory reply period of four months — AECC decision to open an administrative inquiry — No position adopted by the AECC within the statutory reply period as to the reality of the alleged psychological harassment — Concept of decision impliedly rejecting the request for assistance — Non-existent act — Inadmissibility)

(2017/C 178/16)

Language of the case: French

Parties

Applicant: HF (represented by: A. Tymen, lawyer)

Defendant: European Parliament (represented by: E. Taneva and M. Ecker, acting as Agents)

Re:

Application on the basis of Article 270 TFEU seeking, firstly, the annulment of an implied decision of the Parliament's Authority empowered to conclude contracts of employment, allegedly made on 11 April 2015, rejecting the request for assistance made by the applicant on 11 December 2014 and, secondly, compensation for the harm allegedly suffered by the applicant.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the European Parliament to bear its own costs and to pay half of the costs incurred by Ms HF;*

3. *Orders Ms HF to bear half of her own costs.*

([1]) OJ C 27, 25.1.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-142/15 and transferred to the General Court of the European Union on 1.9.2016).

Judgment of the General Court of 24 April 2017 — HF v Parliament

(Case T-584/16) ([1])

(Civil Service — Member of the auxiliary contract staff — Article 3b of the CEOS — Successive employments as a member of the auxiliary contract staff — Fixed-term contracts — Decision not to renew — Abuse of power — Request for assistance — Right to be heard — Non-contractual liability)

(2017/C 178/17)

Language of the case: French

Parties

Applicant: HF (represented by: A. Tymen, lawyer)

Defendant: European Parliament (represented by: L. Deneys and S. Alves, acting as Agents)

Re:

Application on the basis of Article 270 TFEU seeking, firstly, the annulment of the Parliament's decision not to renew the applicant's contract as a member of the auxiliary contract staff and, secondly, compensation for the harm allegedly suffered by the applicant, essentially as a result of that decision.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Ms HF to pay the costs.*

([1]) OJ C 165, 10.5.2016 (case initially registered before the European Union Civil Service Tribunal under Case No F-14/16 and transferred to the General Court of the European Union on 1.9.2016).

Order of the General Court of 17 March 2017 — Deutsche Post v Commission

(Case T-152/12) ([1])

(State aid — Postal sector — Aid granted to Deutsche Post by the German authorities — Increase in the cost of stamps combined with subsidies paid in order to cover the pension costs of employees engaged as officials — Decision declaring the aid incompatible with the internal market — No need to adjudicate)

(2017/C 178/18)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) (represented by: J. Sedemund, T. Lübbig and M. Klasse, lawyers)

Defendant: European Commission (represented by: D. Grespan, T. Maxian Rusche and R. Sauer, acting as Agents)

Interveners in support of the defendant: UPS Europe NV/SA (Brussels, Belgium) and United Parcel Service Deutschland Inc. & Co. OHG (Neuss, Germany) (represented by: initially by E. Henny and T. Ottervanger, lawyers, and subsequently by T. Ottervanger, lawyer)

Re:

Application based on Article 263 TFEU and seeking annulment of Articles 1 to 4 and 6 of Commission Decision 2012/636/EU of 25 January 2012 concerning Measure C 36/07 (ex NN 25/07) implemented by Germany for Deutsche Post AG (OJ 2012 L 289, p. 1).

Operative part of the order

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

2. *The European Commission is ordered to bear its own costs and to pay those incurred by Deutsche Post AG.*

3. *UPS Europe and United Parcel Service Deutschland are ordered to bear their own costs.*

([1]) OJ C 165, 9.6.2012.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (VIEWTY SMART)

(Case T-488/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/19)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 June 2015 (Case R 1734/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

([1]) OJ C 337, 12.10.2015.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (VIEWTY SNAP)

(Case T-489/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/20)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 12 June 2015 (Case R 1938/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

(1) OJ C 337, 12.10.2015.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (Viewty)

(Case T-498/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/21)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 15 June 2015 (Joined Cases R 1935/2014-2 and R 1563/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

(1) OJ C 337, 12.10.2015.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (VIEWTY SMILE)

(Case T-499/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/22)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 June 2015 (Joined Cases R 1565/2014-2 and R 1939/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

([1]) OJ C 354, 26.10.2015.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (VIEWTY PRO)

(Case T-500/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/23)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 11 June 2015 (Case R 1940/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

([1]) OJ C 354, 26.10.2015.

Order of the General Court of 28 March 2017 — LG Electronics v EUIPO — Cyrus Wellness Consulting (Viewty GT)

(Case T-534/15) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2017/C 178/24)

Language of the case: English

Parties

Applicant: LG Electronics, Inc. (Seoul, Republic of Korea) (represented by: M. Graf, lawyer)

Defendant: European Union Intellectual Property Office (represented by: L. Rampini, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO intervening before the General Court: Cyrus Wellness Consulting GmbH (Berlin, Germany) (represented by: A. Wulff and U. Hildebrandt, lawyers)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 12 June 2015 (Joined Cases R 1937/2014-2 and R 1564/2014-2), relating to opposition proceedings between Cyrus Wellness Consulting GmbH and LG Electronics, Inc.

Operative part of the order

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

2. *LG Electronics, Inc., is ordered to bear its own costs and those incurred by the European Union Intellectual Property Office (EUIPO) and Cyrus Wellness Consulting GmbH.*

(1) OJ C 371, 9.11.2015.

Order of the General Court of 27 March 2017 — Frank v Commission

(Case T-603/15) (1)

(Action for annulment — Horizon 2020 Framework Programme for Research and Innovation — Calls for proposals and related activities under the ERC Work Programme 2015 — Decision of the ERCEA declaring the proposal submitted by the applicant ineligible — Implied decision of the Commission rejecting the administrative appeal relating to the decision of the ERCEA — Incorrect designation of the defendant — Inadmissibility)

(2017/C 178/25)

Language of the case: German

Parties

Applicant: Regine Frank (Bonn, Germany) (represented by: initially W. Trautner, subsequently by E. Niitväli and M. Reysen, then by E. Niitväli, M. Reysen and S. Wachs, and finally S. Conrad, lawyers)

Defendant: European Commission (represented by: R. Lyal and B. Conte, acting as agents)

Re:

Application based on Article 263 TFEU seeking the annulment of the decision of the European Research Council Executive Agency (ERCEA) of 5 June 2015 relating, in the context of the 'ERC starting grant' programme, to proposal No 680151 of the applicant — which was not given a positive evaluation during step 1 and was not admitted to step 2 of the evaluation — and the Commission's implied decision rejecting the applicant's administrative appeal pursuant to Article 22 (1) of Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (OJ 2003 L 11, p. 1).

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Ms Regine Frank and the European Commission shall bear their own costs.*

(1) OJ C 48, 8.2.2016.

Order of the General Court of 6 April 2017 — Klausner Holz Niedersachsen v Commission

(Case T-101/16) ([1])

(Action for failure to act — State aid — Supply of timber — Preliminary examination of an alleged State aid granted by the German authorities in the form of contracts for the supply of timber — Commission's failure to adopt a position within a reasonable period of time — Manifest inadmissibility)

(2017/C 178/26)

Language of the case: German

Parties

Applicant: Klausner Holz Niedersachsen GmbH (Saalburg-Ebersdorf, Germany) (represented by: D. Reich, C. Hipp and T. Ilgner, lawyers)

Defendant: European Commission (represented by: L. Flynn and T. Maxian Rusche, acting as agents)

Re:

Application based on Article 265 TFEU seeking a declaration that the Commission unlawfully failed to take a decision, within a reasonable period of time, in the context of the preliminary examination of an alleged State aid granted to the applicant by the German authorities in the form of contracts for the supply of timber.

Operative part of the order

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

2. *Klausner Holz Niedersachsen GmbH is ordered to pay the costs.*

([1]) OJ C 145, 25.4.2016.

Order of the General Court of 20 March 2017 — Kohrener Landmolkerei and DHG v Commission

(Case T-199/16) ([1])

(Action for annulment — System of traditional specialities guaranteed — Regulation (EU) No 1151/2012 — Implementing Regulation (EU) 2016/304 — Time-limit for the forwarding of the notice of opposition to the Commission by the competent authorities — Action manifestly lacking any foundation in law)

(2017/C 178/27)

Language of the case: German

Parties

Applicants: Kohrener Landmolkerei GmbH (Penig, Germany) and DHG Deutsche Heumilchgesellschaft mbH (Frohburg, Germany) (represented by: A. Wagner, lawyer)

Defendant: European Commission (represented by: initially D. Triantafyllou, J. Guillem Carrau and J. Herkommer, and subsequently D. Triantafyllou and J. Herkommer, acting as Agents)

Re:

Action pursuant to Article 263 TFEU seeking annulment of Commission Implementing Regulation (EU) 2016/304 of 2 March 2016 entering a name in the register of traditional specialities guaranteed (Heumilch/Haymilk/Latte fieno/Lait de foin/Leche de heno (TSG)) (OJ 2016 L 58, p. 28).

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law.*

2. *Kohrener Landmolkerei GmbH and DHG Deutsche Heumilchgesellschaft mbH shall bear their own costs and pay those incurred by the European Commission.*

(1) OJ C 232, 27.6.2016.

Order of the General Court of 6 April 2017 — Brancheforeningen for Regulerkraft i Danmark v Commission

(Case T-203/16) (1)

(State aid — Complaint — Action for failure to act — Definition of Commission's position terminating the failure to act — No need to adjudicate)

(2017/C 178/28)

Language of the case: Danish

Parties

Applicant: Brancheforeningen for Regulerkraft i Danmark (Ikast, Denmark) (represented by: N. Gade, lawyer)

Defendant: European Commission (represented by: D. Recchia and S. Maaløe, acting as agents)

Re:

Application based on Article 265 TFEU seeking a declaration that the Commission unlawfully failed to comply with the time-limits relating to the duration of the preliminary examination procedure for State aid and, after the opening of the formal procedure, unlawfully failed to take a decision on the complaint, introduced by the applicant, relating to State aid.

Operative part of the order

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

2. *Brancheforeningen for Regulerkraft i Danmark and the European Commission shall bear their own costs.*

(1) OJ C 232, 27.6.2016.

Order of the General Court of 27 March 2017 — Palos Caravina v CdT

(Case T-725/16) (1)

(Civil service — Members of the temporary staff — Officials — Recruitment — Communication of information concerning the appointment of a third party — Third paragraph of Article 25 of the Staff Regulations — No need to adjudicate)

(2017/C 178/29)

Language of the case: French

Parties

Applicant: Maria José Palos Caravina (Luxembourg, Luxembourg) (represented by: A. Salerno and P. Singer, lawyers)

Defendant: Translation Centre for the Bodies of the European Union (CdT) (represented by: M. Garnier and J. Rikkert, acting as Agents)

Re:

Action based on Article 270 TFEU and seeking annulment of, first, the CdT's decision of 23 December 2015 refusing to provide the applicant with information concerning the appointment of a third party and, second, the CdT's decision of 5 July 2016 rejecting the complaint brought by the applicant against that refusal.

Operative part of the order

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

2. *The Translation Centre for the Bodies of the European Union (CdT) is ordered to bear its own costs and to pay those incurred by Ms Maria José Palos Caravina.*

([1]) OJ C 462, 12.12.2016.

Order of the President of the General Court of 23 March 2017 — Hungary v Commission

(Case T-20/17 R)

(Application for interim measures — State aid — Hungarian tax on advertisement turnover — Decision declaring the aid to be incompatible with the internal market and ordering its recovery — Application for suspension of operation of a measure — No urgency)

(2017/C 178/30)

Language of the case: Hungarian

Parties

Applicant: Hungary (represented by: M. Fehér, acting as Agent)

Defendant: European Commission (represented by: V. Bottka and P.-J. Loewenthal, acting as Agents)

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of operation of Commission Decision C(2016) 6929 final of 4 November 2016 on the measure SA.39235 (2015/C) (ex 2015/NN) implemented by Hungary on the taxation of advertisement turnover.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 6 April 2017 — Le Pen v Parliament

(Case T-86/17 R)

(Interim measures — Member of the European Parliament — Recovery by offsetting of allowances paid as reimbursement of parliamentary assistance expenses — Application for suspension of operation of a measure — No urgency)

(2017/C 178/31)

Language of the case: French

Parties

Applicant: Marion Anne Perrine Le Pen (Saint-Cloud, France) (represented by: M. Ceccaldi and J.-P. Le Moigne, lawyers)

Defendant: European Parliament (represented by: G. Corstens and S. Seyr, acting as agents)

Re:

Application based on Articles 278 and 279 TFEU seeking the suspension of the operation of the decision of the Secretary-General of the Parliament of 5 December 2016 declaring that the sum of EUR 298 497,87 had been unduly paid to the applicant and had to be recovered from her as well as debit note No 2016-1560 of 6 December 2016 adopted pursuant to that decision.

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Kibelisa v Council

(Case T-139/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/32)

Language of the case: French

Parties

Applicant: Roger Kibelisa (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Kampete v Council

(Case T-140/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/33)

Language of the case: French

Parties

Applicant: Ilunga Kampete (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Amisi Kumba v Council

(Case T-141/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/34)

Language of the case: French

Parties

Applicant: Gabriel Amisi Kumba (Kasa-Vubu, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Kaimbi v Council

(Case T-142/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/35)

Language of the case: French

Parties

Applicant: Delphin Kaimbi (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Ilunga Luyoyo v Council

(Case T-143/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/36)

Language of the case: French

Parties

Applicant: Ferdinand Ilunga Luyoyo (Kasa-Vubu, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Numbi v Council

(Case T-144/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/37)

Language of the case: French

Parties

Applicant: John Numbi (Kinshasa, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 23 March 2017 — Kanyama v Council

(Case T-145/17 R)

(Application for interim measures — Restrictive measures — Democratic Republic of the Congo — Application for suspension of operation of a measure — No urgency)

(2017/C 178/38)

Language of the case: French

Parties

Applicant: Célestin Kanyama (La Gombe, Democratic Republic of the Congo) (represented by: O. Okito and A. Ouannès, lawyers)

Defendant: Council of the European Union

Re:

Application based on Articles 278 TFEU and 279 TFEU, seeking suspension of the operation of Council Regulation (EU) 2016/2230 of 12 December 2016 amending Council Regulation (EC) No 1183/2005 imposing certain specific restrictive measures directed against persons acting in violation of the arms embargo with regard to the Democratic Republic of the Congo (OJ 2016 L 336 I, p. 1).

Operative part of the order

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

2. *The costs are reserved.*

Order of the President of the General Court of 24 March 2017 — RV v Commission

(Case T-167/17 R)

(Interim measures — Civil Service — Placed on leave and automatically retired — Application for a stay of execution — Not urgent)

(2017/C 178/39)

Language of the case: French

Parties

Applicant: RV (represented by: J.-N. Louis and N. de Montigny, lawyers)

Defendant: European Commission (represented by: G. Berscheid and D. Martin, acting as Agents)

Re:

Application on the basis of Articles 278 TFEU and 279 TFEU seeking a stay of execution of the Commission's decision of 21 December 2016 placing the applicant on leave in the interests of the service and retiring the applicant automatically with effect from 1 April 2017.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 27 March 2017 — Boehringer Ingelheim International v Commission

(Case T-191/17)

(2017/C 178/40)

Language of the case: English

Parties

Applicant: Boehringer Ingelheim International GmbH (Ingelheim am Rhein, Germany) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission Implementing Decision of 19 January 2017 C(2017)379(final);

— state that the effects of this Commission Implementing Decision remain in force until the European Commission has adopted a new decision; and

— order the European Commission to pay its own costs and those of the applicant.

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 that the Commission's decision of 19 January 2017 constitutes a violation of Article 12(1) of Regulation (EC) No 726/2004, read in conjunction with Article 11 of Directive 2001/83/EC and the Notice to Applicants.

2. Second plea in law, alleging that the Commission's decision of 19 January 2017 is not consistent with the application of the relevant provisions and guidelines and regulatory practice in other cases and thus constitutes a violation of the principles of equal treatment and non-discrimination and results in a distortion of the level playing field.

Action brought on 24 March 2017 — RZ v EESC and Committee of the Regions

(Case T-192/17)

(2017/C 178/41)

Language of the case: French

Parties

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

Defendants: European Economic and Social Committee, Committee of the Regions

Form of order sought

The applicant claims that the Court should:

— grant him access to the documents in the file for the proceedings in Case [*confidential*] ([1]) relating to the amicable settlement of that case, and allow him to file observations in that regard;

— annul the joint decision of the European Economic and Social Committee (EESC) and of the Committee of the Regions (CoR) to transfer [*confidential*] to the Directorate for Translation as a result of the agreement made to that effect between 14 January and 4 February 2016, in so far as that agreement made provision both for that transfer and for [the person concerned] to continue to perform her duties [*confidential*];

— annul the decision, adopted on 11 May 2016 by the CoR following that agreement, for [*confidential*] to be transferred to the Directorate for Translation while broadly continuing to perform her duties [*confidential*];

— annul the decisions of the Secretary-General of the CoR of 13 December 2016 and of the Secretary-General of the EESC of 19 December 2016 in so far as those decisions confirm the instructions given to the applicant on 30 June 2016 by the Directorate for Translation in order to implement the CoR's decision of 11 May 2016;

— order the EESC and the CoR to pay jointly a sum of EUR 25 000 to the applicant, assessed provisionally and *ex aequo et bono*, as compensation for the damage to his professional reputation, his authority and his health resulting from the contested decisions;

— order the EESC and the CoR jointly to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of Article 41(1) and (2) of the Charter of Fundamental Rights of the European Union and of the second paragraph of Article 25 of the Staff Regulations, in that the applicant was not heard before a decision was made by joint agreement by the EESC and the CoR to transfer an official, and/or the applicant was not notified immediately, in writing, of the decision taken by the CoR in implementation of that agreement, while the reasons for that decision were not comprehensively and clearly explained to him.

2. Second plea in law, alleging infringement of Article 7(1) of the Staff Regulations and a misuse of powers and abuse of process, in that the official concerned was transferred to the Directorate for Translation while broadly continuing to perform her duties within the language unit in question.

3. Third plea in law, alleging a manifest error in assessing the interests of the service, in that the reason for the transfer was to bring to an end an untenable situation or to protect the official against the applicant.

4. Fourth plea in law, alleging infringement of the first and second paragraphs of Article 21 of the Staff Regulations, in that the Secretaries-General of the EESC confirmed the order given to the applicant by the Directorate for Translation to continue to assign tasks, or to have tasks assigned, to the official in question.

5. Fifth plea in law, alleging infringement of the principle of equal treatment, in that the Secretaries-General confirmed the instruction given to the applicant by the Directorate for Translation to have tasks assigned to the official in question that were equivalent, in terms of volume and importance, to those entrusted to translators with a similar level of experience, and to have her translations revised in a comparable manner.

6. Sixth plea in law, alleging infringement of the decisions on leave, in that the Secretaries-General confirmed the instruction given to the applicant by the Directorate for Translation to set out on the same day, or on the following day at the latest, confining himself to overriding reasons, the grounds in the interests of the service for refusing a request for leave made by the official in question.

([1]) Confidential data redacted.

Action brought on 29 March 2017 — SB v EUIPO

(Case T-200/17)

(2017/C 178/42)

Language of the case: English

Parties

Applicant: SB (represented by: S. Pappas, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Form of order sought

The applicant claims that the Court should:

— annul the decision of the Executive Director of the European Union Intellectual Property Office (EUIPO) of 2 June 2016 by which the applicant was refused a second renewal of her contract and against the rejection by the Executive Director of EUIPO of 19 December 2016 of the applicant's complaint of 1 September 2016;

— 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 the breach of the Staff Regulations and the Conditions of Employment of other servants of the European Union as a result of the application of the defendant's internal rules which equate officials and temporary agents with indefinite contracts. Moreover, by differentiating between temporary agents with fixed-term contracts and temporary agents with contracts concluded for an indefinite period, the defendant infringes the Staff Regulations and, in the case at hand, the principle of equal treatment.

2. Second plea in law, alleging the lack of reasoning or illegal, contradictory and insufficient reasoning.

3. Third plea in law, alleging failure to respect the duty of care owed to staff.

4. Fourth plea in law, alleging discrimination on the grounds of age as a result of the application by the defendant of a staff policy aimed at reducing the average age of the staff population.

Action brought on 6 April 2017 — Out of the blue v EUIPO — Dubois and MFunds USA (FUNNY BANDS)

(Case T-214/17)

(2017/C 178/43)

Language in which the application was lodged: English

Parties

Applicant: Out of the blue KG (Lilienthal, Germany) (represented by: G. Hasselblatt, V. Töbelmann and A. Zarm, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other parties to the proceedings before the Board of Appeal: Frédéric Dubois (Lasne, Belgium) and MFunds USA LLC (Miami Beach, Florida, United States)

Details of the proceedings before EUIPO

Proprietors of the trade mark at issue: Other parties to the proceedings before the Board of Appeal

Trade mark at issue: EU word mark 'FUNNY BANDS' — EU trade mark No 9 350 794

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 20/01/2017 in Case R 1081/2016-2)

Form of order sought

The applicant claims that the Court should:

— overturn the contested decision;

— declare the EU trade mark No 009 350 794 'FUNNY BANDS' invalid pursuant to Articles 52(1)(a), 7(1)(b) and (c) EUTMR;

— order EUIPO to pay its own costs as well as the costs of the applicant;

— in the event that the EUTM Proprietors join in these proceedings as an intervening party, order it to bear its own costs.

Plea in law

— Infringement of Article 52(1)(a) in conjunction with Article 7(1)(b) and (c) of Regulation No 207/2009.

Action brought on 12 April 2017 — HF v Parliament

(Case T-218/17)

(2017/C 178/44)

Language of the case: French

Parties

Applicant: HF (represented by: A. Tymen, lawyer)

Defendant: European Parliament

Form of order sought

— Declare the present action admissible and well-founded;

In consequence,

— Annul the decision of 3 June 2016 rejecting the applicant's request for assistance of 11 December 2014;

— Insofar as necessary, annul the decision of 4 January 2017, received on 11 January 2017, rejecting the applicant's claim of 6 September 2016;

— Order the defendant to pay damages set *ex aequo et bono* at EUR 90 000 in compensation of the non-pecuniary harm suffered by the applicant;

— Order the defendant to pay all 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 infringement of the rights of the defence, infringement of Article 41 of the Charter of Fundamental Rights of the European Union, infringement of the right to be heard and infringement of the principle of an adversarial process.

2. Second plea in law, alleging procedural errors such as to vitiate the contested decision and partiality in the procedure followed by the Committee.

3. Third plea in law, alleging a manifest error of assessment, [infringement] of the obligation to provide assistance and the duty of care and infringement of Articles 12a and 24 of the Staff Regulations.

Action brought on 12 April 2017 — M J Quinlan & Associates v EUIPO — Intersnack Group (Shape of a kangaroo)

(Case T-219/17)

(2017/C 178/45)

Language in which the application was lodged: German

Parties

Applicant: M J Quinlan & Associates Pty Ltd (Hope Island, Queensland, Australia) (represented by: M. Freiherr von Welser and A. Bender, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Intersnack Group GmbH & Co. KG (Düsseldorf, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU tridimensional mark (Shape of a kangaroo) — European Union trade mark No 13 342

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Second Board of Appeal of EUIPO of 27 January 2017 in Case R 218/2016-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs;

— conduct an oral hearing, in order to ensure the parties' right to a full hearing.

Pleas in law

— Infringement of Article 51(1)(a) of Regulation No 207/2009;

— Infringement of Article 51(1)(a) in conjunction with Article 15(2) of Regulation No 207/2009;

— Infringement of Article 51(1)(a) in conjunction with Article 15(1)(2)(b) of Regulation No 207/2009.

Action brought on 12 April 2017 — Pfalzmarkt für Obst und Gemüse v EUIPO (100 % Pfalz)

(Case T-220/17)

(2017/C 178/46)

Language of the case: German

Parties

Applicant: Pfalzmarkt für Obst und Gemüse eG (Mutterstadt, Germany) (represented by: C. Gehweiler, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark containing the word elements '100 % Pfalz' — Application for registration No 15 085 475

Contested decision: Decision of the First Board of Appeal of EUIPO of 7 February 2017 in Case R 1549/2016-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009;

— Infringement of Article 7(1)(c) of Regulation No 207/2009;

— Infringement of Article 75(1) of Regulation No 207/2009.

Action brought on 18 April 2017 — Rstudio v EUIPO — Embarcadero Technologies (RSTUDIO)

(Case T-230/17)

(2017/C 178/47)

Language in which the application was lodged: English

Parties

Applicant: Rstudio, Inc. (Boston, Massachusetts, United States) (represented by: M. Edenborough, QC, and G. Smith, Solicitor)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Embarcadero Technologies, Inc. (San Francisco, California, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'RSTUDIO' – International registration designating the European Union No 999 644

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 6 February 2017 in Case R 493/2016-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in its entirety;

— order EUIPO to pay to the applicant the costs of and occasioned by this appeal and the costs below; in the alternative, if the potential intervener actually intervenes, order EUIPO and the intervener to be jointly and severally liable for the applicant's costs of and occasioned by this appeal and the costs below.

Pleas in law

— The Board of Appeal wrongly assessed the goods for which proof of use had been established and, accordingly, failed to conduct the correct comparison of goods;

— The Board of Appeal wrongly assessed the similarity of the relevant goods and the similarity of the relevant marks and, accordingly, wrongly assessed the existence of the likelihood of confusion.

Order of the General Court of 17 March 2017 — El Corte Inglés v EUIPO — AATC Trading (ALIA)

(Case T-299/13) ([1])

(2017/C 178/48)

Language of the case: Spanish

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

([1]) OJ C 215, 27.7.2013.

Order of the General Court of 28 February 2017 — MPF Holdings v Commission

(Case T-788/14) ([1])

(2017/C 178/49)

Language of the case: English

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

([1]) OJ C 65, 23.2.2015.

Order of the General Court of 3 April 2017 — Corsini Santolaria v EUIPO — Molins Tura (biombo 13)

(Case T-145/16) ([1])

(2017/C 178/50)

Language of the case: English

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

([1]) OJ C 222, 20.6.2016.

Order of the General Court of 17 March 2017 — Tri Ocean Energy v Council

(Case T-383/16) ([1])

(2017/C 178/51)

Language of the case: English

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

([1]) OJ C 350, 26.9.2016.

Order of the General Court of 21 March 2017 — La Patrouille v EUIPO — Alpha Industries (Représentation d'une figure avec des angles)

(Case T-709/16) ([1])

(2017/C 178/52)

Language of the case: French

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

([1]) OJ C 462, 12.12.2016.

Order of the General Court of 21 March 2017 — La Patrouille v EUIPO — Alpha Industries (AEROBATIX)

(Case T-710/16) ([1])

(2017/C 178/53)

Language of the case: French

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

([1]) OJ C 462, 12.12.2016.

Order of the President of the General Court of 6 February 2017 — Bender v Parliament

(Case T-30/17)

(2017/C 178/54)

Language of the case: German

The President of the General Court has ordered that the case be removed from the register.

Order of the General Court of 6 April 2017 — TeamLava v EUIPO — King.com (Icônes animées)

(Case T-75/17)

(2017/C 178/55)

Language of the case: English

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

Order of the General Court of 6 April 2017 — TeamLava v EUIPO — King.com (Icônes animées)

(Case T-76/17)

(2017/C 178/56)

Language of the case: English

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

Order of the General Court of 6 April 2017 — TeamLava v EUIPO — King.com (Icônes animées)

(Case T-77/17)

(2017/C 178/57)

Language of the case: English

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

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