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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fifth Chamber) of 20 June 2019 (request for a preliminary ruling from the Landgericht Saarbrücken — Germany) — Criminal proceedings against K. P.

(Case C-458/15) ([1])

(Reference for a preliminary ruling — Common foreign and security policy — Combating terrorism — Restrictive measures directed against certain persons and entities — Freezing of funds — Common Position 2001/931/CFSP — Article 1(4) and (6) — Regulation (EC) No 2580/2001 — Article 2(3) — Council Decision retaining an organisation on the list of persons, groups and entities involved in terrorist acts — Validity)

(2019/C 270/02)

Language of the case: German

Referring court

Landgericht Saarbrücken

Parties to the criminal proceedings against

K. P.

Operative part of the judgment

1. Consideration of the question referred for a preliminary ruling has disclosed no factor such as to affect the validity of:

— Council Decision 2007/445/EC of 28 June 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decisions 2006/379/EC and 2006/1008/EC;

— Council Decision 2007/868/EC of 20 December 2007 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/445/EC;

— Council Decision 2008/583/EC of 15 July 2008 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2007/868/EC; and

— Council Decision 2009/62/EC of 26 January 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2008/583/EC.

2. Council Regulation (EC) No 501/2009 of 15 June 2009 implementing Article 2(3) of Regulation (EC) No 2580/2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism and repealing Decision 2009/62/EC is invalid in so far as, by that regulation, the Liberation Tigers of Tamil Eelam were kept on the list provided for in Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

([1]) OJ C 354, 26.10.2015.

Judgment of the Court (Eighth Chamber) of 19 June 2019 (request for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom) — C & J Clark International Ltd v Commissioners for Her Majesty's Revenue & Customs

(Case C-612/16) ([1])

(Reference for a preliminary ruling — Anti-dumping — Interpretation and validity of regulations re-imposing anti-dumping duties following the delivery by the Court of a judgment declaring invalidity — Legal basis — Non-retroactivity — Limitation)

(2019/C 270/03)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: C & J Clark International Ltd

Defendant: Commissioners for Her Majesty's Revenue & Customs

Operative part of the judgment

1. An examination of the questions of validity referred to the Court has revealed nothing capable of affecting the validity of Commission Implementing Regulation (EU) 2016/1395 of 18 August 2016 re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and produced by Buckinghan Shoe Mfg Co. Ltd, Buildyet Shoes Mfg., DongGuan Elegant Top Shoes Co. Ltd, Dongguan Stella Footwear Co. Ltd, Dongguan Taiway Sports Goods Limited, Foshan City Nanhai Qun Rui Footwear Co., Jianle Footwear Industrial, Sihui Kingo Rubber Shoes Factory, Synfort Shoes Co. Ltd, Taicang Kotoni Shoes Co. Ltd, Wei Hao Shoe Co. Ltd, Wei Hua Shoe Co. Ltd, Win Profile Industries Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14, or the validity of Commission Implementing Regulation (EU) 2016/1647 of 13 September 2016 re-imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in Vietnam and produced by Best Royal Co. Ltd, Lac Cuong Footwear Co., Ltd, Lac Ty Co., Ltd, Saoviet Joint Stock Company (Megastar Joint Stock Company), VMC Royal Co Ltd, Freetrend Industrial Ltd and its

related company Freetrend Industrial A (Vietnam) Co, Ltd, Fulgent Sun Footwear Co., Ltd, General Shoes Ltd, Golden Star Co, Ltd, Golden Top Company Co., Ltd, Kingmaker Footwear Co. Ltd, Tripos Enterprise Inc., Vietnam Shoe Majesty Co., Ltd, and implementing the judgment of the Court of Justice in joined cases C-659/13 and C-34/14;

2. The rules on limitation laid down in Article 221(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 2700/2000 of the European Parliament and of the Council of 16 November 2000, are applicable to the collection of the anti-dumping duties established by the implementing regulations referred to in point 1 of the operative part of the present judgment.

([1]) OJ C 38, 6.2.2017.

Judgment of the Court (Grand Chamber) of 18 June 2019 — Republic of Austria v Federal Republic of Germany

(Case C-591/17) ([1])

(Failure of a Member State to fulfil obligations — Articles 18, 34, 56 and 92 TFEU — Legislation of a Member State prescribing an infrastructure use charge for passenger vehicles — Situation in which owners of vehicles registered in that Member State qualify for relief from motor vehicle tax in an amount corresponding to that charge)

(2019/C 270/04)

Language of the case: German

Parties

Applicant: Republic of Austria (represented by: G. Hesse, J. Schmoll and C. Drexel, acting as Agents)

Defendant: Federal Republic of Germany (represented by: T. Henze and S. Eisenberg, acting as Agents, and by C. Hillgruber, Rechtsanwalt)

Intervener in support of the applicant: Kingdom of the Netherlands (represented by: J. Langer, J.M. Hoogveld and M.K. Bulterman, acting as Agents)

Intervener in support of the defendant: Kingdom of Denmark (represented by: J. Nymann-Lindegren and M. Wolff, acting as Agents)

Operative part of the judgment

The Court:

1. Declares that the Federal Republic of Germany, by introducing the infrastructure use charge for passenger vehicles and by providing, simultaneously, a relief from motor vehicle tax in an amount at least equivalent to the amount of the charge paid, to the benefit of owners of vehicles registered in Germany, failed to fulfil its obligations under Articles 18, 34, 56 and 92 TFEU.

2. Dismisses the action as to the remainder.

3. Orders the Federal Republic of Germany to pay three quarters of the costs incurred by the Republic of Austria and to bear its own costs.

4. Orders the Republic of Austria to bear one quarter of its own costs.

5. Orders the Kingdom of the Netherlands and the Kingdom of Denmark to bear their own costs.

(1) OJ C 402, 27.11.2017.

Judgment of the Court (First Chamber) of 19 June 2019 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Skatteverket v Memira Holding AB

(Case C-607/17) (1)

(Reference for a preliminary ruling — Corporation tax — Group of companies — Freedom of establishment — Deduction of losses of a non-resident subsidiary — Concept of 'final losses' — Merger-absorption of the subsidiary by the parent company — Legislation of the State of establishment of the subsidiary granting the deduction of losses in the context of a merger solely to the entity sustaining those losses)

(2019/C 270/05)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Memira Holding AB

Operative part of the judgment

1. For the purposes of the assessment of the finality of the losses of a non-resident subsidiary, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), the fact that the subsidiary's Member State of establishment does not allow the losses of one company to be transferred, in the event of a merger, to another company liable for corporation tax, whereas such a transfer is provided for by the Member State in which the parent company is established in the event of a merger between resident companies, is not decisive, unless the parent company demonstrates that it is impossible for it to deduct those losses by ensuring, in particular by means of a sale, that they are fiscally taken into account by a third party for future tax periods;

2. If the fact referred to in the first question becomes relevant, the fact that there is, in the State of establishment of the subsidiary, no other entity which could have deducted those losses in the event of a merger if such a deduction had been authorised is irrelevant.

(1) OJ C 5, 8.1.2018.

Judgment of the Court (First Chamber) of 19 June 2019 (request for a preliminary ruling from the Högsta förvaltningsdomstolen — Sweden) — Skatteverket v Holmen AB

(Case C-608/17) ([1])

(Reference for a preliminary ruling — Corporation tax — Group of companies — Freedom of establishment — Deduction of losses of a non-resident subsidiary — Concept of 'final losses' — Application to a sub-subsidiary — Legislation of the State of establishment of the parent company requiring direct ownership of the subsidiary — Legislation of the State of establishment of the subsidiary restricting the set-off of losses and prohibiting them from being set off in the year of liquidation)

(2019/C 270/06)

Language of the case: Swedish

Referring court

Högsta förvaltningsdomstolen

Parties to the main proceedings

Applicant: Skatteverket

Defendant: Holmen AB

Operative part of the judgment

1. The concept of final losses of a non-resident subsidiary, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), does not apply to a sub-subsidiary unless all the intermediate companies between the parent company applying for group relief and the sub-subsidiary sustaining losses that could be regarded as final are established in the same Member State;

2. For the purposes of the assessment of the finality of a non-resident subsidiary's losses, within the meaning of paragraph 55 of the judgment of 13 December 2005, Marks & Spencer (C-446/03, EU:C:2005:763), the fact that the subsidiary's Member State of establishment does not allow the losses of one company to be transferred to another company in the year of liquidation is not decisive, unless the parent company demonstrates that it is impossible for it to deduct those losses by ensuring, in particular by means of a sale, that they are taken into account by a third party for future periods;

3. If the fact referred to in paragraph 2 of the operative part of the present judgment becomes relevant, the extent to which the legislation of the State of establishment of the subsidiary sustaining the losses that could be regarded as final results in it not being possible to set off part of them against the current profits of the loss-making subsidiary or against those profits of another company in the same group is irrelevant.

([1]) OJ C 5, 8.1.2018.

Judgment of the Court (First Chamber) of 19 June 2019 — RF v Commission

(Case C-660/17 P) ([1])

(Appeal — Action for annulment — Application submitted by fax — Original of the application lodged out of time with the Registry of the General Court — Delay in the delivery of mail — Definition of 'force majeure or unforeseeable circumstances')

(2019/C 270/07)

Language of the case: Polish

Parties

Appellant: RF (represented by: K. Komar-Komarowski, radca prawny)

Other party: European Commission (represented by: J. Szczodrowski, G. Meessen and I. Rogalski, acting as Agents)

Operative part of the judgment

The Court:

1. Rejects the request for admission of new evidence;

2. Dismisses the appeal;

3. Orders RF to bear its own costs and pay those incurred by the European Commission.

([1]) OJ C 190, 4.6.2018.

Judgment of the Court (Fifth Chamber) of 20 June 2019 (request for a preliminary ruling from the Verwaltungsgericht Berlin — Germany) — ExxonMobil Production Deutschland GmbH v Bundesrepublik Deutschland

(Case C-682/17) ([1])

(Reference for a preliminary ruling — Environment — Directive 2003/87/EC — Scheme for greenhouse gas emission allowance trading — Natural gas processing installation — Sulphur recovery — 'Claus process' — Production of electricity in a secondary facility — Production of heat — Emission of inherent carbon dioxide (CO2) — Article 2(1) — Scope — Annex I — Activity of 'combustion of fuels' — Article 3(u) — Concept of 'electricity generator' — Article 10a(3) and (4) — Transitional arrangements for the harmonised free allocation of emission allowances — Decision 2011/278/EU — Scope — Article 3(c) — Concept of 'heat benchmark sub-installation')

(2019/C 270/08)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: ExxonMobil Production Deutschland GmbH

Defendant: Bundesrepublik Deutschland

Operative part of the judgment

1. Article 3(u) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC, as amended by Directive 2009/29/EC of the European Parliament and of the Council of 23 April 2009, must be interpreted as meaning that an installation, such as that at issue in the main proceedings, which produces, within the framework of its activity of 'combustion of fuels in installations with a total rated thermal input exceeding 20 [megawatts (MW)]', referred to in Annex I to that directive, electricity intended essentially to be used for its own needs, must be regarded as an 'electricity generator', within the meaning of that provision, where that installation, first, carries out simultaneously an activity for producing a product which does not fall within that annex and, second, continuously feeds, for consideration, even a small part of the electricity produced into the public electricity network, to which that installation must be permanently connected for technical reasons.

2. Article 3(c) of Commission Decision 2011/278/EU of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87 must be interpreted as meaning that, in so far as an installation such as that at issue in the main proceedings must be regarded as an 'electricity generator', within the meaning of Article 3(u) of Directive 2003/87, it is not entitled to be allocated free emission allowances in respect of the heat produced within the framework of its activity of 'combustion of fuels in installations with a total rated thermal input exceeding 20 MW', referred to in Annex I to that directive, where that heat is used for purposes other than the production of electricity, since such an installation does not fulfil the conditions laid down in Article 10a(4) and (8) of the directive.

([1]) OJ C 112, 26.3.2018.

Judgment of the Court (Fifth Chamber) of 20 June 2019 (request for a preliminary ruling from the Augstākā tiesa — Latvia) — 'Oribalt Rīga' SIA, formerly 'Oriola Rīga' SIA v Valsts ieņēmumu dienests

(Case C-1/18) ([1])

(Reference for a preliminary ruling — Customs union — Regulation (EEC) No 2913/92 — Article 30(2)(b) and (c) — Regulation (EEC) No 2454/93 — Article 152(1)(a) and (b) — Determination of the customs value of the goods — Definition of 'similar goods' — Medicinal products — Account taken of any factor that may have an impact on the economic value of the medicinal product concerned — Time-limit of 90 days in which the imported goods must be sold in the European Union — Mandatory time-limit — No account taken of trade discounts)

(2019/C 270/09)

Language of the case: Latvian

Referring court

Augstākā tiesa

Parties to the main proceedings

Applicant: 'Oribalt Rīga' SIA, formerly 'Oriola Rīga' SIA

Defendant: Valsts ieņēmumu dienests

Operative part of the judgment

1. Article 30(2)(b) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, as amended by Regulation (EC) No 82/97 of the European Parliament and of the Council of 19 December 1996, must be interpreted as meaning that when the customs value of goods, such as the medicinal product at issue in the main proceedings, is calculated by applying the deductive method laid down in that provision, the competent national customs authority must, in order to identify 'similar goods', take into consideration any relevant factor, such as the respective compositions of those goods, their substitutability in the light of their effects and their commercial interchangeability, thus conducting a factual assessment which takes into account any factor that may have an impact on the real economic value of those goods, including the market position of the imported goods and of their manufacturer.

2. Article 152(1)(b) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Regulation No 2913/92 must be interpreted as meaning that, in order to determine the unit price of imported goods using the method laid down in Article 30(2)(c) of Regulation No 2913/92, as amended by Regulation No 82/97, the time-limit of 90 days within which the imported goods must be sold in the European Union, referred to in Article 152(1)(b) of Regulation No 2454/93, is a mandatory time-limit.

3. Article 30(2)(c) of Regulation No 2913/92, as amended by Regulation No 82/97, must be interpreted as meaning that reductions in the sales price of the imported goods cannot be taken into account in determining the customs value of those goods pursuant to that provision.

([1]) OJ C 104, 19.3.2018.

Judgment of the Court (Fourth Chamber) of 19 June 2019 (request for a preliminary ruling from the Tribunale Amministrativo Regionale della Campania — Italy) — Meca Srl v Comune di Napoli

(Case C-41/18) ([1])

(Reference for a preliminary ruling — Public procurement — Directive 2014/12/EU — Article 57(4)(c) and (g) — Award of public service contracts — Optional grounds for exclusion from participation in a public procurement procedure — Grave professional misconduct calling into question the integrity of an economic operator — Termination of an earlier contract on account of failures in its execution — Action before the courts preventing the contracting authority from assessing the breach of contract until the end of the judicial proceedings)

(2019/C 270/10)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale della Campania

Parties to the main proceedings

Applicant: Meca Srl

Defendant: Comune di Napoli

Intervener: Sirio Srl

Operative part of the judgment

Article 57(4)(c) and (g) of 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 must be interpreted as precluding national legislation pursuant to which an action before the courts against a decision to terminate a public contract, taken by a contracting authority on account of significant deficiencies arising in the execution of that contract, prevents the contracting authority which issues a new call for tenders from conducting any assessment, at the stage of the selection of tenderers, of the reliability of the operator concerned by that termination.

([1]) OJ C 142, 23.4.2018.

Judgment of the Court (Second Chamber) of 20 June 2019 (request for a preliminary ruling from the Juzgado de lo Contencioso-Administrativo de Pamplona — Spain) — Daniel Ustariz Aróstegui v Departamento de Educación del Gobierno de Navarra

(Case C-72/18) ([1])

(Reference for a preliminary ruling — Social policy — Directive 1999/70/EC — Framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP — Clause 4(1) — Principle of non-discrimination — Public sector education — National provision granting particular additional remuneration only to teachers employed for an indefinite duration as established public officials — Exclusion of teachers employed under a fixed-term contract governed by public law — Concept of 'objective grounds' - Characteristics inherent in the status of established public official)

(2019/C 270/11)

Language of the case: Spanish

Referring court

Juzgado de lo Contencioso-Administrativo de Pamplona

Parties to the main proceedings

Applicant: Daniel Ustariz Aróstegui

Defendant: Departamento de Educación del Gobierno de Navarra

Operative part of the judgment

Clause 4(1) of the Framework Agreement on fixed-term work, concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP, must be interpreted as precluding a national provision, such as that at issue in the main proceedings, which restricts entitlement to particular additional remuneration to teachers employed for an indefinite duration as established public officials, to the exclusion of, in particular, teachers employed under fixed-term contracts governed by public law, if the completion of a certain period of service is the only condition for grant of that additional remuneration.

([1]) OJ C 161, 7.5.2018.

Judgment of the Court (Second Chamber) of 20 June 2019 (request for a preliminary ruling from the Tribunal Supremo — Spain) — Línea Directa Aseguradora, SA v Segurcaixa, Sociedad Anónima de Seguros y Reaseguros

(Case C-100/18) ([1])

(Reference for a preliminary ruling — Insurance against civil liability in respect of the use of motor vehicles — Directive 2009/103/EC — Article 3, first paragraph — Concept of 'use of vehicles' — Damage to property as a result of a fire in a vehicle parked in the private garage of the property — Compulsory insurance cover)

(2019/C 270/12)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Applicant: Línea Directa Aseguradora, SA

Defendant: Segurcaixa, Sociedad Anónima de Seguros y Reaseguros

Operative part of the judgment

Article 3 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles, and the enforcement of the obligation to insure against such liability, must be interpreted as meaning that a situation such as that at issue in the main proceedings, in which a vehicle parked in a private garage of a building, used in accordance with its function as a means of transport, has caught fire, giving rise to a fire which originated in the electrical circuit of that vehicle and caused damage to that building, even though that vehicle has not been moved for more than 24 hours before the fire occurred, falls within the concept of 'use of vehicles' referred to in that provision.

([1]) OJ C 161, 7.5.2018.

Judgment of the Court (Third Chamber) of 20 June 2019 (request for a preliminary ruling from the Curtea de Apel București — Romania) — Grup Servicii Petroliere SA v Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

(Case C-291/18) ([1])

(Reference for a preliminary ruling — Common system of value added tax (VAT) — Directive 2006/112/EC — Article 148(a) and (c) — Exemptions related to international transport — Supply of offshore jackup drilling rigs — Concept of 'vessels used for navigation on the high seas' — Scope)

(2019/C 270/13)

Language of the case: Romanian

Referring court

Curtea de Apel București

Parties to the main proceedings

Applicant: Grup Servicii Petroliere SA

Defendants: Agenția Națională de Administrare Fiscală — Direcția Generală de Soluționare a Contestațiilor, Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

Operative part of the judgment

Article 148(a) and (c) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax must be interpreted as meaning that the expression 'vessels used for navigation on the high seas' contained in that provision does not apply to the supply of floating structures, such as the offshore jackup drilling rigs of the type at issue in the main proceedings, which are used predominantly in a stationary position to exploit hydrocarbon deposits at sea.

([1]) OJ C 259, 23.7.2018.

Judgment of the Court (Third Chamber) of 20 June 2019 (request for a preliminary ruling from the arbeidsrechtbank Antwerpen — Belgium) –Tine Vandenbon, Jamina Hakelbracht, Instituut voor de Gelijkheid van Vrouwen en Mannen v WTG Retail BVBA

(Case C-404/18) ([1])

(Reference for a preliminary ruling — Social policy — Directive 2006/54/EC — Equal treatment of men and women — Access to employment and working conditions — Article 24 — Protection against retaliatory measures — Rejection of a candidate due to her pregnancy — Employee intervening in favour of that candidate — Dismissal of that employee)

(2019/C 270/14)

Language of the case: Dutch

Referring court

Arbeidsrechtbank Antwerpen

Parties to the main proceedings

Applicants: Tine Vandenbon, Jamina Hakelbracht, Instituut voor de Gelijkheid van Vrouwen en Mannen

Defendant: WTG Retail BVBA

Operative part of the judgment

Article 24 of Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation must be interpreted as meaning that it precludes national legislation, such as that at issue in the main proceedings, under which, in a situation where a person who believes to be discriminated against on grounds of sex has lodged a complaint, an employee who has supported that person in that context is protected from retaliatory measures taken by the employer solely if that employee has intervened as a witness in the context of the investigation of that complaint and that that employee's witness statement satisfies formal requirements laid down by that legislation.

([1]) OJ C 311, 3.9.2018.

Appeal brought on 15 April 2019 by Associazione Nazionale GranoSalus — Liberi Cerealicoltori & Consumatori (Associazione GranoSalus) against the order of the General Court (First Chamber) delivered on 14 February 2019 in Case T-125/18, Associazione GranoSalus v Commission

(Case C-313/19 P)

(2019/C 270/15)

Language of the case: Italian

Parties

Appellant: Associazione Nazionale GranoSalus — Liberi Cerealicoltori & Consumatori (Associazione GranoSalus) (represented by: G. Dalfino, lawyer)

Other party to the proceedings: European Commission

Pleas in law and main arguments

1. The appeal against the order of the General Court is based on the infringement of the fourth paragraph of Article 263 TFEU and of Article 47 of the Charter of Fundamental Rights of the European Union, read in conjunction with Articles 6 and 13 of the European Convention on Human Rights.

2. The appellant, first of all, claims infringement of the fourth paragraph of Article 263 TFEU, in so far as the General Court disregarded the fact that Associazione GranoSalus has standing to bring an action by virtue of the fact that its members have individual standing, since the contested Implementing Regulation (EU) 2017/2324 'is of direct and individual concern to them' as a 'regulatory act which is of direct concern to them and does not entail implementing measures'.

   In that regard, the association claims that the General Court erred in applying the provision in question, in so far as it considered that the condition of individual concern was not met because 'some of the applicant's members are allegedly affected by the contested act in their general capacity as consumers and citizens of the EU' (paragraph 57 of the order).

That classification of the members of the applicant GranoSalus is however incorrect in the light of the statute of the association which makes its members, and through them, the association, holders and promoters of an interest relating to the protection of consumers and of agricultural producers via the implementation, in particular, of actions 'seeking to combat, especially at EU level, any increase in the thresholds of mycotoxins and other contaminants in order to protect the health of consumers and, in particular, children'.

Since the condition of individual concern is satisfied and that condition is cumulative with respect to that of direct concern, the Court was wrong to rule from that point of view without taking account of it.

3. The association also claims that the General Court was wrong, in its order, to consider that the condition of direct concern required for admissibility, in accordance with the last limb of the fourth paragraph of Article 263 TFEU was not satisfied on account of the alleged existence of national measures implementing the contested Regulation (EU) 2017/2325, giving the reason for its decision in that regard as 'renewal of marketing authorisations of phytopharmaceutical products containing the active substance "glyphosate"', such acts being regarded as constituting 'implementing measures of the contested act, within the meaning of the fourth paragraph, last sentence, of Article 263 TFEU' (paragraphs 84 and 85 of the contested order).

The incorrect nature of that assessment is illustrated by the fact, demonstrated by documentary evidence, that the Member State in which the association, and its members, has its headquarters (Italy) received Regulation (EU) 2017/2325 via a communication from the Ministry of Health of 19 December 2017, which merely gave rise to the automatic renewal of the active substance 'glyphosate' for a period no longer than five years, while at the same time extending the authorisations relating to phytosanitary products containing glyphosate until 15 December 2022, without any discretionary assessment, even concerning the technical requirements laid down in Annexes I and II to Regulation (EU) 2017/2325.

The association claims in that regard that, even if the ministerial communication of 19 December 2017 were to be considered to be an implementing measure, the General Court did not take into account the fact that that communication could not be the subject of an action before the national courts because such an action is precluded under Italian law and the relevant case-law (Consiglio di Stato (Council of State), judgment No 6243 of 9 November 2005).

4. The association then claims that the order infringes the last limb of the fourth paragraph of Article 263, in so far as the General Court did not take the subject matter of the dispute, as defined in the application, into consideration. The association notes in that regard that the General Court did not taken into consideration the fact that the direct effects of the contested regulation on the association, and through it on its members, arise from the potentially carcinogenic nature of the active substance 'glyphosate' (see the study of the International Agency for Research on Cancer published on 20 March 2015, disregarded in the contested Regulation (EU) 2017/2324), approval of which falls within the exclusive competence of the Member States because the national authorisation of a plant protection product does not involve any assessment concerning the active substance 'glyphosate' which was already approved previously by the European Union, which consequently precludes the Italian State from being entitled to authorise or refuse the placing on the market of plant protection products by reference to the active substance 'glyphosate'. In the present case, the General Court examined the conditions laid down in the last limb of the fourth paragraph of Article 263 without taking into account the arguments put forward in the dispute, that is to say that glysophate residues are present in groundwater, food (pasta) and soil, with the consequent harm that the placing on the market of that substance causes to the territory, citizens of Member States and the interests of the association, and through it, of its members.

The General Court should therefore have examined the concern within the meaning of the abovementioned Article 263 with regard to that the circumstance and the provisions of the association, as well as with regard to the standing of its members, which it did not do in its order.

5. On the basis of the foregoing, the association disputes the interpretation of the last limb of the fourth paragraph of Article 263, given by the court of first instance, which deprives that provision of any effect and is contrary to the intention of the European legislature. In that regard, the applicant refers to the findings made by Advocates General in various proceedings (see, inter alia, the Opinion in case C-456/13 P, EU:C:2014:2283 and in joined cases C-622/16 P to C-624/16 P), in accordance with which such a restrictive interpretation would deprive Article 263 of meaning and concrete effect.

In the light of the foregoing, the association argues that the interpretation of last limb of the fourth paragraph of Article 263, given by the General Court in the contested order is manifestly contrary to Article 47 of the Charter of Fundamental Rights ('Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing …') and Articles 6 (Right to a fair trial) and 13 (Right to an effective remedy) of the European Convention on Human Rights, thereby hindering the possibility of bringing an action before the General Court on account of direct concern in such a scenario, and causing unjustified harm to the system of protection of rights enshrined in EU law.

Form of order sought

Associazione GranoSalus claims that the Court should annul the order of the General Court of 15 February 2019 in Case T-125/18, by which it declared the action inadmissible and that the members of the association did not have standing to bring proceedings by reason, first, of the alleged absence of individual effects of the contested regulation on the latter and, second, the existence of national implementing measures also excluding direct concern — and accordingly declare admissible the application seeking annulment of Implementing Regulation (EU) 2017/2324 and the requests for measures formulated therein, including measures of inquiry, and refer the case back to the General Court for a ruling on the substantive grounds of appeal.

Request for a preliminary ruling from the Grondwettelijk Hof (Belgium) lodged on 18 April 2019 — Centraal Israëlitisch Consistorie van België and Others, Unie Moskeeën Antwerpen VZW and Islamitisch Offerfeest Antwerpen VZW, JG and KH, Executief van de Moslims van België and Others, Coördinatie Comité van Joodse Organisaties van België. Section belge du Congrès juif mondial et Congrès juif européen VZW and Others, intervening parties: LI, Vlaamse regering, Waalse regering, Kosher Poultry BVBA and Others and Centraal Israëlitisch Consistorie van België and Others, Global Action in the Interest of Animals VZW (GAIA)

(Case C-336/19)

(2019/C 270/16)

Language of the case: Dutch

Referring court

Grondwettelijk Hof

Parties to the main proceedings

Applicants: Centraal Israëlitisch Consistorie van België and Others, Unie Moskeeën Antwerpen VZW, Islamitisch Offerfeest Antwerpen VZW, JG, KH, Executief van de Moslims van België and Others, Coördinatie Comité van Joodse Organisaties van België. Section belge du Congrès juif mondial et Congrès juif européen VZW and Others

Intervening parties: LI, Vlaamse regering, Waalse regering, Kosher Poultry BVBA and Others, Centraal Israëlitisch Consistorie van België and Others, Global Action in the Interest of Animals VZW (GAIA)

Questions referred

1. Should point (c) of the first subparagraph of Article 26(2) of Council Regulation (EC) No 1099/2009 ([1]) of 24 September 2009 on the protection of animals at the time of killing be interpreted as meaning that Member States are permitted, by way of derogation from the provision contained in Article 4(4) of that regulation and with a view to promoting animal welfare, to adopt rules such as those contained in the decreet van het Vlaamse Gewest van 7 juli 2017'houdende wijziging van de wet van 14 augustus 1986 betreffende de bescherming en het welzijn der dieren, wat de toegelaten methodes voor het slachten van dieren betreft' (Decree of the Flemish Region of 7 July 2017'amending the Law of 14 August 1986 on the protection and welfare of animals, regarding permitted methods of slaughtering animals'), rules which provide, on the one hand, for a prohibition of the slaughter of animals without stunning that also applies to the slaughter carried out in the context of a religious rite and, on the other hand, for an alternative stunning procedure for the slaughter carried out in the context of a religious rite, based on reversible stunning and on condition that the stunning should not result in the death of the animal?

2. If the first question referred for a preliminary ruling is to be answered in the affirmative, does point (c) of the first subparagraph of Article 26(2) of Regulation No 1099/2009, in the interpretation referred to in the first question, infringe Article 10(1) of the Charter of Fundamental Rights of the European Union?

3. If the first question referred for a preliminary ruling is to be answered in the affirmative, does point (c) of the first subparagraph of Article 26(2) read in conjunction with Article 4(4) of Regulation No 1099/2009, in the interpretation referred to in the first question, infringe Articles 20, 21 and 22 of the Charter of Fundamental Rights of the European Union, since, in the case of the killing of animals by particular methods prescribed by religious rites, provision is only made for a conditional exception to the obligation to stun the animal (Article 4(4), read in conjunction with Article 26(2)), whereas in the case of the killing of animals during hunting and fishing and during sporting and cultural events, for the reasons stated in the recitals of the regulation, the relevant provisions stipulate that those activities do not fall within the scope of the regulation, or are not subject to the obligation to stun the animal when it is killed (Article 1(1), second subparagraph, and Article 1(3))?

(1) OJ 2009 L 303, p. 1.

Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands) lodged on 3 May 2019 — Crown Van Gelder B.V. v Autoriteit Consument en Markt

(Case C-360/19)

(2019/C 270/17)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Appellant: Crown Van Gelder B.V.

Respondent: Autoriteit Consument en Markt

Question referred

Must Article 37(11) of Directive 2009/72/EC (1) of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC be interpreted as meaning that that provision also makes the right of complaint with regard to the operator of the national grid (transmission system operator) available to a party if that party has no connection to the grid of that national grid operator (transmission system operator) but has a connection only to a regional grid (distribution system) to which the transmission of electricity is interrupted as a result of a power cut on the national grid (transmission system) that feeds the regional grid (distribution system)?

(1) OJ 2009 L 211, p. 55.

Request for a preliminary ruling from the College van Beroep voor het Bedrijfsleven (Netherlands) lodged on 3 May 2019 — De Ruiter vof v De Minister van Landbouw, Natuur en Voedselkwaliteit

(Case C-361/19)

(2019/C 270/18)

Language of the case: Dutch

Referring court

College van Beroep voor het Bedrijfsleven

Parties to the main proceedings

Applicant: De Ruiter vof

Defendant: De Minister van Landbouw, Natuur en Voedselkwaliteit

Question referred

Are Article 99(1) of Regulation (EU) No 1306/2013 ([1]) of the European Parliament and the Council of 17 December 2013 on the financing, management and monitoring of the common agricultural policy [and repealing Council Regulations (EEC) No 352/78, (EC) No 165/94, (EC) No 2799/98, (EC) No 814/2000, (EC) No 1290/2005 and (EC) No 485/2008] and Article 73(4)(a) of Commission Implementing Regulation (EU) No 809/2014 ([2]) of 17 July 2014 laying down rules for the application of Regulation (EU) No 1306/2013 of the European Parliament and of the Council with regard to the integrated administration and control system, rural development measures and cross compliance valid, in so far as, in those provisions, the year of the finding of non-compliance is decisive for the determination of the year for which the cross-compliance reduction is calculated, in a situation where the year of the non-compliance with the cross-compliance rules is not the same as the year of the finding of non-compliance?

([1]) OJ 2013 L 347, p. 549.
([2]) OJ 2014 L 227, p. 69.

Request for a preliminary ruling from the Ondernemingsrechtbank Antwerpen (Belgium) lodged on 10 May 2019 — Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM) v BVBA Weareone.World, NV Wecandance

(Case C-372/19)

(2019/C 270/19)

Language of the case: Dutch

Referring court

Ondernemingsrechtbank Antwerpen

Parties to the main proceedings

Applicant: Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (SABAM)

Defendants: BVBA Weareone.World, NV Wecandance

Questions referred

Must Article 102 TFEU, whether or not read in conjunction with Article 16 of Directive 2014/26/EU ([1]) on collective management of copyright and related rights and the multi-territorial licensing of rights in musical works for online use in the internal market, be interpreted as meaning that there is abuse of a dominant position if a copyright management company which has a de facto monopoly in a Member State, applies a remuneration model to organisers of musical events for the right to communicate musical works to the public, based among other things on turnover,

1. which uses a flat-rate tariff in tranches, instead of a tariff that takes into account the precise share (making use of advanced technical tools) of the music repertoire protected by the management company played during the event?

2. which makes licence fees dependent on external elements such as, inter alia, the admission price, the price of refreshments, the artistic budget for the performers and the budget for other elements, such as decor?

([1]) OJ 2014 L 84, p. 72.

Action brought on 16 May 2019 — European Commission v Kingdom of Spain

(Case C-384/19)

(2019/C 270/20)

Language of the case: Spanish

Parties

Applicant: European Commission (represented by: E. Manhaeve and E. Sanfrutos Cano, Agents)

Defendant: Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

— declare that the Kingdom of Spain has failed to fulfil its obligations under Article 7(1) and (5) and Article 15(1) of Directive 2007/60/EC ([1]) as regards river basin districts ES120 Gran Canaria, ES122 Fuerteventura, ES123 Lanzarote, ES124 Tenerife, ES125 La Palma, ES126 La Gomera and ES127 El Hierro;

— declare that the Kingdom of Spain has failed to fulfil its obligations under Article 10(1) and (2) of Directive 2007/60/EC as regards river basin districts ES120 Gran Canaria, ES122 Fuerteventura and ES125 La Palma;

— order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

It is apparent the information provided by the Spanish authorities that Spain has not established, completed and published, by the 22 December 2015 deadline laid down in the Directive, flood risk management plans in respect of the river basin districts ES120 Gran Canaria, ES122 Fuerteventura, ES123 Lanzarote, ES124 Tenerife, ES125 La Palma, ES126 La Gomera and ES127 El Hierro. In addition, the Commission has not received a copy of those plans, as required by Article 15(1) of the Directive.

Furthermore, in three river basin districts — ES120 Gran Canaria, ES122 Fuerteventura and ES125 La Palma — the public information and consultation phase has not yet taken place or has not in any event been completed. Accordingly, the Commission considers that the Kingdom of Spain has failed to fulfil its obligations under Article 10(1) and (2) of Directive 2007/60/EC as regards those three river basin districts.

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

Request for a preliminary ruling from the Raad van State (Belgium) lodged on 17 May 2019 — RTS infra BVBA, Aannemingsbedrijf Norré-Behaegel v Vlaams Gewest

(Case C-387/19)

(2019/C 270/21)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicants: RTS infra BVBA, Aannemingsbedrijf Norré-Behaegel

Defendant: Vlaams Gewest

Questions referred

1. Should the provisions of Article 57(4)(c) and (g), in conjunction with paragraphs 6 and 7 of that article, of Directive 2014/24/EU ([1]) of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC be interpreted as precluding an application whereby the economic operator is required to provide evidence on its own initiative of the measures that the economic operator has taken to demonstrate its reliability?

2. If so, do the provisions of Article 57(4)(c) and (g), in conjunction with paragraphs 6 and 7 of that article, of Directive 2014/24 therefore have direct effect?

([1]) OJ 2014 L 94, p. 65.

Request for a preliminary ruling from the Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD) lodged on 17 May 2019 — MK v Autoridade Tributária e Aduaneira

(Case C-388/19)

(2019/C 270/22)

Language of the case: Portuguese

Referring court

Tribunal Arbitral Tributário (Centro de Arbitragem Administrativa — CAAD)

Parties to the main proceedings

Applicant: MK

Defendant: Autoridade Tributária e Aduaneira

Question referred

Should Articles 12, 56, 57 and 58 of the Treaty Establishing the European Community [now Articles 18, 63, 64 and 65 of the Treaty on the Functioning of the European Union], taken together, be interpreted as precluding national legislation, such as that in dispute in the present case (Article 43(2) of the Income Tax Code, approved by Decree-Law 442-A/88 of 30 November 1988, as amended by Law 109-B/2001 of 27 December 2001), with the amendments introduced by Law 67-A/2007 of 31 December 2007, which inserted paragraphs 7 and 8 (now paragraphs 9 and 10) into Article 72 of the Income Tax Code, the purpose of which is to enable the capital gains realised from the sale of immovable property situated in a Member State (Portugal) by a resident of another Member State of the European Union (France) not to be subject, **by election**, to a tax burden greater than that which would be applicable for the same type of transaction to capital gains realised by a resident of the State in which that immovable property is situated?

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 21 May 2019 — VG Bild-Kunst v Stiftung Preußischer Kulturbesitz

(Case C-392/19)

(2019/C 270/23)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Appellant in the appeal on a point of law: VG Bild-Kunst

Respondent in the appeal on a point of law: Stiftung Preußischer Kulturbesitz

Question referred

Does the embedding of a work — which is available on a freely accessible website with the consent of the rightholder — in the website of a third party by way of framing constitute communication to the public of that work within the meaning of Article 3(1) of Directive 2001/29/EC ([1]) where it occurs through circumvention of protection measures against framing taken or instigated by the rightholder?

([1]) Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Action brought on 24 May 2019 — Republic of Poland v European Parliament and Council of the European Union

(Case C-401/19)

(2019/C 270/24)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: B. Majczyna, acting as agent, W. Gonatarski, adwokat)

Defendants: European Parliament, Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: 'and made best efforts to prevent their future uploads in accordance with point (b)') of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC; ([1])

— order European Parliament and Council of the European Union to pay the costs.

Pleas in law and main arguments

The Republic of Poland seeks the annulment of Article 17(4)(b) and Article 17(4)(c), *in fine* (i.e. the part containing the following wording: 'and made best efforts to prevent their future uploads in accordance with point (b)') of Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC (OJ EU L 130 of 17.5.2019, p. 92) and an order that the European Parliament and the Council of the European Union are to pay the costs.

In the alternative, should the Court find that the contested provisions cannot be deleted from Article 17 of Directive (EU) 2019/790 without substantively changing the rules contained in the remaining provisions of that article, the Republic of Poland claims that the Court should annul Article 17 of Directive (EU) 2019/790 in its entirety.

The Republic of Poland raises against that the contested provisions of Directive 2019/790 a plea alleging infringement of the right to freedom of expression and information guaranteed by Article 11 of the Charter of Fundamental Rights of the European Union.

The Republic of Poland claims specifically that the imposition on online content-sharing service providers of the obligation to make best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information (point (b) of Article 17(4) of Directive 2019/790) and the imposition on online content-sharing service providers of the obligation to make best efforts to prevent the future uploads of protected works or other subject-matter for which the rightsholders have lodged a sufficiently substantiated notice (point (c), *in fine*, of Article 17(4) of Directive 2019/790) make it necessary for the service providers — in order to avoid liability — to carry out prior automatic verification (filtering) of content uploaded online by users, and therefore make it necessary to introduce preventive control mechanisms. Such mechanisms undermine the essence of the right to freedom of expression and information and do not comply with the requirement that limitations imposed on that right be proportional and necessary.

([1]) OJ 2019 L 130, p. 92.

Request for a preliminary ruling from the Conseil d'État (France) lodged on 24 May 2019 — Société Générale SA v Ministre de l'Action et des Comptes publics

(Case C-403/19)

(2019/C 270/25)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: Société Générale SA

Defendant: Ministre de l'Action et des Comptes publics

Question referred

In the light of Article 56 of the Treaty establishing the European Community, now Article 63 of the Treaty on the Functioning of the European Union, does the fact that the application of the rules set out in paragraph 5 of this decision, in order to compensate for the double taxation of dividends paid to a company liable for corporation tax in the Member State of residence by a company resident in another Member State and subject, by virtue of the exercise by that Member States of the power of taxation, to withholding tax, is liable to create a disadvantage to the detriment of transactions involving the securities of foreign companies carried out by companies liable for corporation tax in the first Member State, mean that that State, where it has been decided to grant a concession in response to the double taxation, goes beyond waiving its right to receive the tax revenue that it would derive from the imposition of corporation tax on the dividends in question?

Request for a preliminary ruling from the Cour administrative (Luxembourg) lodged on 31 May 2019 — State of the Grand Duchy of Luxembourg v L

(Case C-437/19)

(2019/C 270/26)

Language of the case: French

Referring court

Cour administrative

Parties to the main proceedings

Applicant: State of the Grand Duchy of Luxembourg

Defendant: L

Questions referred

1. Must Article 20(2)(a) of Directive 2011/16 ([1]) be interpreted as meaning that where a request for exchange of information formulated by an authority of a requesting Member State designates the taxpayers to which it relates simply by reference to their status as shareholders and beneficial owners of a company, without those taxpayers having been identified by the requesting authority in advance, individually and by name, the request satisfies the identification requirements laid down by that provision?

2. If the answer to the first question is in the affirmative, must Article 1(1) and Article 5 of that directive be interpreted as meaning that the standard of foreseeable relevance may be met, if the requesting Member State, in order to establish that it is not engaged in a fishing expedition, despite the fact that it has not individually identified the taxpayers concerned, provides a clear and sufficient explanation evidencing that it is conducting a targeted investigation into a limited group of persons, and not simply an investigation by way of general fiscal surveillance, and that its investigation is justified by reasonable suspicions of non-compliance with a specific legal obligation?

3. Must Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as meaning that, where

   — a person who has had imposed upon him by the competent authority of a Member State an administrative financial penalty for non-compliance with an administrative decision, requiring him to provide information in connection with an exchange of information between national tax authorities pursuant to Directive 2011/16, where the national law of the requested Member State does not make provision for an action to be brought against the latter decision, and where the person concerned has challenged the legality of that decision within an action brought against the financial penalty, and

   — has only obtained disclosure of the minimal information referred to in Article 20(2) of Directive 2011/16 in the course of the judicial procedure set in motion by the bringing of that action,

   that person is entitled, in the event of a definitive incidental finding upholding the validity of the decision requiring the requested information and of the decision imposing a fine on him, to a period of grace for the payment of that fine, so that he has an opportunity, having thus been given disclosure of the material supporting the contention — definitively accepted by the competent court — that the test of foreseeable relevance is met, to comply with the decision requiring the requested information?

([1]) Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ 2011 L 64, p. 1).

Request for a preliminary ruling from the Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch (Netherlands) lodged on 12 June 2019 — TQ v Staatssecretaris van Justitie en Veiligheid

(Case C-441/19)

(2019/C 270/27)

Language of the case: Dutch

Referring court

Rechtbank Den Haag, zittingsplaats 's-Hertogenbosch

Parties to the main proceedings

Applicant: TQ

Defendant: Staatssecretaris van Justitie en Veiligheid

Questions referred

1. Should Article 10 of Directive 2008/115/EC ([1]) ("the Return Directive"), read in conjunction with Articles 4 and 24 of the Charter of Fundamental Rights of the European Union ("the Charter"), recital 22 of the preamble and Article 5(a) of the Return Directive and Article 15 of Directive 2011/95/EU ([2]) ('the Qualification Directive'), be interpreted as meaning that, before imposing an obligation to return on an unaccompanied minor, a Member State should ascertain and then should investigate whether, at least in principle, adequate reception facilities exist and are available in the country of origin?

2. Should Article 6(1) of the Return Directive, read in conjunction with Article 21 of the Charter, be interpreted as meaning that a Member State is not permitted to make distinctions on the basis of age when granting lawful residence on a territory if it is established that an unaccompanied minor does not qualify for refugee status or subsidiary protection?

3. Should Article 6(4) of the Return Directive be interpreted as meaning that, if an unaccompanied minor does not comply with his obligation to return and the Member State does not and will not undertake any concrete actions to proceed with removal, the obligation to return should be suspended and lawful residence should be granted? Should Article 8(1) of the Return Directive be interpreted as meaning that, where a Member State imposes a return decision on an unaccompanied minor without then undertaking any removal actions until the unaccompanied minor reaches the age of eighteen, that must be considered to be contrary to the principle of loyalty and the principle of sincere cooperation in the Union?

([1]) 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).

([2]) Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ 2011, L 337, p. 9).

Request for a preliminary ruling from the Østre Landsret (Denmark) lodged on 6 June 2019 — Viasat Broadcasting UK Ltd v TV 2/Danmark A/S, Kingdom of Denmark

(Case C-445/19)

(2019/C 270/28)

Language of the case: Danish

Referring court

Østre Landsret

Parties to the main proceedings

Applicant: Viasat Broadcasting UK Ltd

Defendants: TV 2/Danmark A/S, Kingdom of Denmark

Questions referred

1. Does the obligation for a national court to order an aid recipient to pay illegality interest (see the judgment in *CELF* ([1])) apply also in a situation such as that in the present case, in which the unlawful State aid constituted public service compensation which was subsequently found to be compatible with the internal market under Article 106(2) TFEU and in which approval was granted on the basis of an assessment of the entire public service undertaking's overall financial situation, including its capitalisation?

2. Does the obligation for a national court to order an aid recipient to pay illegality interest (see the judgment in *CELF*) apply also in respect of amounts which, in circumstances such as those of the present case, are transferred from the aid recipient to affiliated undertakings pursuant to a public-law obligation but which are categorised by a final Commission decision as constituting an advantage for the aid recipient within the meaning of Article 107(1) TFEU?

3. Does the obligation for a national court to order an aid recipient to pay illegality interest (see the judgment in *CELF*) apply also in respect of State aid which the aid recipient, in circumstances such as those of the present case, received from a publicly-controlled undertaking, given that the latter's resources are derived partly from sales of the aid recipient's services?

([1]) Judgment of 12 February 2008 (Case C-199/06, *CELF and Ministre de la Culture et de la Communication*, EU:C:2008:79).

Appeal brought on 20 June 2019 by the Federal Republic of Germany against the judgment of the General Court (First Chamber) delivered on 10 April 2019 in Case T-229/17, Federal Republic of Germany v European Commission

(Case C-475/19 P)

(2019/C 270/29)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (represented by: J. Möller, acting as Agent, M. Kottmann, M. Winkelmüller and F. van Schewick, Rechtsanwälte)

Other parties to the proceedings: European Commission, Republic of Finland

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of the European Union of 10 April 2019 in Case T-229/17, *Federal Republic of Germany* v *European Commission*;

2. annul Commission Decision (EU) 2017/133 of 25 January 2017 on the maintenance with a restriction in the *Official Journal of the European Union* of the reference of harmonised standard EN 14342:2013 'Wood flooring and parquet: Characteristics, evaluation of conformity and marking' in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council; ([1])

3. annul Commission Decision (EU) 2017/145 of 25 January 2017 on the maintenance with a restriction in the *Official Journal of the European Union* of the reference of harmonised standard EN 14904:2006 'Surfaces for sport areas — Indoor surfaces for multi-sports use: Specification' in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council; ([2])

4. annul the Commission communications in the framework of the implementation of Regulation (EU) No 305/2011 of the European Parliament and of the Council laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC of 10 March 2017, 11 August 2017, 15 December 2017 and 9 March 2018 ([3]) in so far as they relate to the harmonised standards EN 14342:2013 and EN 14904:2006;

5. as an alternative to the second, third and fourth heads of claim above, refer the case back to the General Court;

6. order the Commission to pay the costs in the proceedings.

Grounds of appeal and main arguments

The appellant relies on the following three grounds of appeal:

First, the judgment under appeal infringes the first paragraph of Article 263 TFEU as it dismisses the Federal Republic of Germany's heads of claim seeking the annulment of the communications at issue as inadmissible. The General Court failed to recognise that the communications at issue are intended to produce binding legal effects that are not identical to the legal effects of the decisions at issue.

Second, the judgment under appeal infringes Article 18(2), in conjunction with Article 17(5), of Regulation No 305/2011. The General Court failed to recognise that, under these provisions, the Commission was both empowered and obliged to take one of the measures proposed by the Federal Republic of Germany.

Third, the judgment under appeal infringes Article 18(2), in conjunction with Articles 3(1) and (2) and 17(3), of Regulation No 305/2011. The General Court failed to recognise that under those provisions the Commission was obliged to investigate whether the standards at issue jeopardised the observance of compliance with the basic requirements for construction works.

([1]) OJ 2017 L 21, p. 113.

([2]) OJ 2017 L 22, p. 62.

([3]) OJ 2017 C 76, p. 32; OJ 2017 C 267, p. 16; OJ 2017 C 435, p. 41; OJ 2018 C 92, p. 139.

Appeal brought on 27 June 2019 by Romania against the order of the General Court (Eighth Chamber) delivered on 30 April 2019 in Case T-530/18, Romania v Commission

(Case C-498/19 P)

(2019/C 270/30)

Language of the case: Romanian

Parties

Appellant: Romania (represented by: C.-R. Canțăr, E. Gane, O.-C. Ichim and M. Chicu, acting as Agents)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— uphold the appeal, set aside the order of the General Court in Case T-530/18 in its entirety, and give a new ruling on Case T-530/18 upholding the action for partial annulment of Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD): ([1])

(a) as regards sub-measure 1a in its entirety (EUR 13 184 846,61 for the years 2015 and 2016);

(b) as regards sub-measures 3a, 5a, 3b and 4b in their entirety (EUR 45 532 000,96 for the years 2014, 2015 and 2016) and, in the alternative, in part for the period prior to 19 September 2015 (EUR 21 315 857,50);

or

— uphold the appeal, set aside the order of the General Court in Case T-530/18 in its entirety, and remit Case T-530/18 back to the General Court so that it may give a new ruling on the action and, in so doing, uphold the action for annulment and annul in part Implementing Decision (EU) 2018/873 as described above;

— order the Commission to pay the costs.

Grounds of appeal and main arguments

A. **Infringement of Articles 263 and 297 TFEU, and failure to observe the principle of legal certainty**

i. **The General Court did not correctly legally assess whether the notification was complete and correct and incorrectly classified the notification issued by the Commission as capable of triggering the period laid down in Article 263 TFEU. This approach by the General Court is also at odds with the principle of legal certainty.**

Romania considers that the presence of any errors relating to the essential elements of a decision such as Decision 2018/873 is capable of compromising the notification and raises serious issues from the point of view of the principle of legal certainty. Consequently, it is sufficient that some errors are present, such as those established by the General Court, for the notification issued by the Commission to be incapable of triggering the period laid down in Article 263 TFEU.

The General Court classified the differences between the published and notified versions of Decision 2018/873 as minor, relying on the fact that the meaning of the text of the decision was unaltered, since the word 'amount' could only correspond to the 'estimated by amount' type of adjustment. Given that that type of adjustment does not exist, Romania considers that the legal reasoning of the General Court is incorrect and it can easily be observed that the meaning of the text of Decision 2018/873 has been affected, and that the notification has been compromised.

ii. The General Court erred in its interpretation of Article 263 TFEU in the light of Article 297 TFEU by failing to take into consideration the effects of the publication of Decision 2018/873 in the Official Journal of the European Union from the point of view of effective information and the principle of legal certainty.

According to the sixth paragraph of Article 263 TFEU, what is relevant in the context of exercising the right to bring proceedings is effective information relating to the content of the contested EU measure, and not the moment when it enters into force or the moment when it produces legal effects.

The moment from which the period of 2 months for bringing an action for annulment of a measure such as Decision 2018/873, which must be notified but which, according to the consistent and long-standing practice of the issuer, must also be published in the Official Journal of the European Union, begins to run must be the moment of publication, plus the period of 14 days laid down by Article 59 of the Rules of Procedure of the General Court.

That solution is all the more necessary in view of the specific circumstances in which Decision 2018/873 was notified to the Romanian authorities and published — circumstances which reveal differences between the notified text and the published text which concern essential elements of that decision.

iii. The General Court failed to observe the principle of legal certainty by considering that one of the inconsistencies raised by Romania (concerning the type of adjustment — 'estimated by amount' versus 'flat rate') constitutes a minor clerical error which was made in the notified and published text but which was not made either in the course of the administrative procedure or in the summary report and which does not give rise to confusion as to the nature of the adjustment.

iv. The General Court infringed Article 263 TFEU by finding that the differences between the notified text and the text published in the Official Journal of the European Union concerning provisions of Decision 2018/873 addressed to other Member States of the European Union were irrelevant and without effect, in view of the privileged applicant status of Member States.

B. **Failure to observe the principle of *audi alteram partem*, including in relation to Article 64 of the Rules of Procedure of the General Court**

Romania considers that the General Court failed to observe the principle of *audi alteram partem* by failing to offer the Romanian authorities the opportunity to adopt a position with regard to the information, communicated by the Commission in response to the question put by that court, on the basis of which the action was dismissed as inadmissible.

(1) Commission Implementing Decision (EU) 2018/873 of 13 June 2018 excluding from European Union financing certain expenditure incurred by the Member States under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2018 L 152, p. 29).

GENERAL COURT

Action brought on 17 June 2019 — XC v Commission.

(Case T-488/18)

(2019/C 270/31)

Language of the case: Italian

Parties

Applicant: XC (represented by: C. Bottino, lawyer)
Defendant: European Commission

Form of order sought
The applicant claims that the Court should:

— Annul, pursuant to Article 270 TFEU, the act excluding the applicant from the open competition EPSO/AD/338/17;

— Annul, pursuant to Article 263(4) TFEU, European Commission decision C(2018) 3969;

— Annul, pursuant to Article 270 TFEU, the reserve list of open competition EPSO/AD/356/18;

— Order compensation for harm to the extent determined by the Court and order the Commission to pay the costs of the proceedings.

Pleas in law and main arguments

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

Concerning the application for annulment, pursuant to Article 270 TFEU of the applicant's exclusion from open competition EPSO/AD/338/17

1. First plea in law, alleging infringement of Articles 3 and 7 of Annex III to the Staff Regulations, as interpreted in particular by the judgment settling Cases T-361/10 *Pachitis* v *Commission* and T-587/16 *HM* v *Commission*

2. Second plea in law based on the fact that, according to the applicant, the preparation procedure for the e-tray exercise constitutes an infringement of the obligation of secrecy of the proceedings of the selection board laid down in Article 6 of Annex III to the Staff Regulations.

3. Third plea in law, based on the fact that the conduct of the e-tray exercise in accordance with the arrangements provided for by EPSO constituted indirect discrimination against the applicant in terms of access and an infringement of the obligation to provide reasonable adjustment.

Concerning the application for annulment, pursuant to Article 263(4) TFEU, of European Commission Decision C(2018) 3969

4. Fourth plea in law based on the infringement of the principles set out in the judgments in Cases T-516/14 *Alexandrou* v *Commission* and C-491/15 P *Typke* v *Commission*

Concerning the application for annulment, pursuant to Article 270 TFEU, of the reserve list of open competition EPSO/AD/356/18

5. Fifth plea in law alleging that EPSO was not entitled to fail to submit its request for re-examination to the selection board within the meaning of point 4.2.2 of the General rules governing open competitions or to take its place in decisions and/or statements of reasons.

6. Sixth plea in law alleging infringement of the provisions of the Staff Regulations and of the Directive concerning discrimination on the grounds of disability.

Action brought on 8 April 2019 — Le Comité de Douzelage de Houffalize v Commission and the EACEA

(Case T-236/19)

(2019/C 270/32)

Language of the case: French

Parties

Applicant: Le Comité de Douzelage de Houffalize (Houffalize, Belgium) (represented by: A. Kettels, lawyer)

Defendants: European Commission and 'Education, Audiovisual and Culture' Executive Agency (EACEA)

Form of order sought

The applicant claims that the Court should:

— annul or vary the contested measure;

— hold that the applicant Committee is entitled to have its 'legal entity' form validated and, consequently, to obtain the financing at issue.

Pleas in law and main arguments

In support of its action against Commission Decision C(2019) 572 final of 4 February 2019 — dismissing the administrative action brought by the applicant against the decision of the EACEA of 25 June 2018, by which the EACEA did not award a grant to the applicant following the application submitted by the latter in the context of the call for applications 'Town Twinning 2017, second deadline' (EACEA 36/2014) — the applicant relies on a single plea in law alleging:

— infringement of Article 131.2 of Regulation No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002;

— infringement of the principle of legitimate expectations and legal certainty;

— infringement of the principle of proportionality and the prohibition of arbitrariness;

— manifest error of assessment;

— and failure to state adequate, sufficient and relevant reasons in that the contested decision states that the legitimate expectations and the legal certainty of the applicant Committee have not been breached.

According to the applicant, that decision fails to respond to the specific issue raised in that regard by the applicant. The answers given either have no connection with the line of argument put forward by the applicant Committee in its application for a re-examination or are manifestly insufficient to justify rejecting the argument arising from the infringement of the principle of legitimate expectation and legal certainty, or, in any event, are contrary to the scope of that principle.

The applicant maintains that it can rely on a legitimate expectation of being recognised as an entity without a legal personality that is eligible for grants, which it has however been denied. The applicant derives that legitimate expectation from the decisions awarding grants that were notified to it at a time when it had the same legal status, namely that of a de facto association, and from the fact that its factual and legal situation was identical and the rules governing the eligibility of entities that do not have a legal personality have not been changed since that time. The applicant submits that there was therefore no reason to renege on that legitimate expectation and adopt a different approach from that which was adopted in the past.

Action brought on 6 May 2019 — Dragomir v Commission

(Case T-297/19)

(2019/C 270/33)

Language of the case: Romanian

Parties

Applicant: Daniel Dragomir (Bucharest, Romania) (represented by: R. Chiriță, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— find that the European Commission has failed to fulfil its obligations with regard to ensuring that Romania fulfils its obligations as set out in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

— find that the European Commission has failed to fulfil its obligations with regard to ensuring that Romania fulfils its obligations as set out in Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA;

— find that the European Commission has failed to fulfil its obligations with regard to ensuring that Romania fulfils its obligations as set out in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

— find that the European Commission has failed to fulfil its obligations with regard to ensuring that Romania observes the rule of law, the independence of courts, and the fundamental rights of persons falling within its jurisdiction;

— order the defendant to pay EUR 2 by way of compensation for the non-material damage caused;

— order the defendant to address existing omissions in future.

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 European Commission failed to fulfil its obligations relating to judicial independence as set out in the decision to introduce a Cooperation and Verification Mechanism, the Treaty and the Charter

   — The European Commission deliberately failed to fulfil its obligations relating to the protection of the rule of law, the independence of the Romanian judiciary which is under attack by the Romanian Intelligence Service, and the applicant's right to a fair trial;

2. Second plea in law, alleging that the European Commission failed to fulfil its obligations concerning the protection of personal data

   — The European Commission failed to fulfil its obligation to verify compliance with the EU directives and regulations concerning the protection of personal data, or fulfilled that obligation in a purely formal way.

Action brought on 31 May 2019 — PNB Banka and Others v ECB

(Case T-330/19)

(2019/C 270/34)

Language of the case: English

Parties

Applicants: PNB Banka AS (Riga, Latvia), CR and CT (represented by: O. Behrends and M. Kirchner, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the ECB's decision of 21 March 2019 regarding the proposed acquisition of qualifying holdings by the applicants in the target bank.

— order the defendant to bear the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the assessment period for the ECB pursuant to Article 22(2) of Directive 2013/36/EU ([1]) expired prior to the contested decision and that it was therefore no longer possible for the ECB to oppose the proposed acquisition.

2. Second plea in law, alleging that the ECB violated the procedure prescribed under Article 15 of the SSM Regulation ([2]) and Articles 85 to 87 of the SSM Framework Regulation. ([3])

3. Third plea in law, alleging that the contested decision is based on an erroneous interpretation and application of the assessment criteria pursuant to Article 23 of Directive 2013/36/EU and its Latvian implementation.

4. Fourth plea in law, alleging that the ECB violated the principle of proportionality.

5. Fifth plea in law, alleging that the ECB failed to take into account the discretionary nature of the decision to oppose a proposed acquisition.

6. Sixth plea in law, alleging that the ECB distorted the relevant facts of the case.

7. Seventh plea in law, alleging that the ECB violated the principles of legitimate expectations and legal certainty.

8. Eighth plea in law, alleging that the ECB violated the *nemo auditor* principle by failing to take into account its own responsibility for the loss of confidence in the regulatory process.

([1]) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ 2013 L 176, p. 338).

([2]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

([3]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (ECB/2014/17) (OJ 2014 L 141, p. 1).

Action brought on 10 June 2019 –Polisario Front v Council

(Case T-344/19)

(2019/C 270/35)

Language of the case: French

Parties

Applicant: Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (Polisario Front) (represented by: G. Devers, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare its action for annulment admissible;

— annul the contested decision;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action brought against Council Decision (EU) 2019/441 of 4 March 2019 on the conclusion of the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco, the Implementation Protocol thereto and the Exchange of Letters accompanying the Agreement (OJ 2019 L 77, p. 4), the applicant relies on eleven pleas in law.

1. First plea in law, alleging the Council's lack of competence to adopt the contested decision, in so far as the European Union and the Kingdom of Morocco do not have the competence to conclude an international agreement applicable to Western Sahara instead of the Sahrawi people, represented by the Polisario Front.

2. Second plea in law, alleging failure to comply with the obligation to examine the question of respect for fundamental rights and for international humanitarian law, in so far as the Council failed to examine that question before adopting the contested decision.

3. Third plea in law, alleging breach, on the part of the Council, of its obligation to execute the judgments of the Court, in so far as the contested decision disregards the grounds of the Court's judgments of 27 February 2018, *Western Sahara Campaign UK* (C-266/16, EU:C:2018:118).

4. Fourth plea in law, alleging breach of the essential principles and values guiding the Union's action on the international scene, since:

   — first, in breach of the right of peoples to respect for their national unity, the contested decision denies the existence of the Sahrawi people by using the expressions 'the people of Western Sahara' and 'the people concerned' instead;

   — secondly, in breach of the right of peoples to dispose freely of their natural resources, the contested decision concludes an international agreement that organises, without consent of the Sahrawi people, the exploitation of its fishery resources by Union vessels;

— thirdly, the contested decision concludes an international agreement applicable to occupied Western Sahara, with the Kingdom of Morocco, in the context of its policy of annexation with regard to that territory and the systematic breaches of fundamental rights that maintaining such a policy entails.

5. Fifth plea in law, alleging breach of the principle of protection of legitimate expectations, in so far as the contested decision is contrary to the declarations of the European Union which has consistently reiterated the need to observe the principles of self-determination and of the relative effect of treaties.

6. Sixth plea in law, alleging misapplication of the principle of proportionality since, given the separate and distinct status of Western Sahara, the intangible character of the right to self-determination and the status of third party of the Sahrawi people, it was not for the Council to carry out a balancing exercise between the alleged 'benefits' from the Fisheries Agreement and its impact on Sahrawi natural resources.

7. Seventh plea in law, alleging conflict with the Common Fisheries Policy since, in accordance with the agreement concluded by the contested decision, Union vessels will have access to the fishery resources of the Sahrawi people, without its consent, in exchange for a financial contribution paid to the Moroccan authorities, although Western Sahara waters are not Moroccan 'waters' for the purposes of Articles 61 and 62 of the United Nations Convention on the Law of the Sea.

8. Eighth plea in law, alleging breach of the right to self-determination since:

— first, by using the expressions 'the people of Western Sahara' and 'the people concerned' instead, the contested decision denies the national unity of the Sahrawi people as a subject of the right to self-determination;

— secondly, in breach of the right of the Sahrawi people to dispose freely of its natural resources, the contested decision organises, without its consent, the exploitation of its fishery resources by Union vessels;

— thirdly, in breach of the right of the Sahrawi people to respect for the territorial integrity of its national territory, the contested decision denies the separate and distinctive status of Western Sahara and endorses the illegal division thereof by the Moroccan 'Berm'.

9. Ninth plea in law, alleging infringement of the principle of the relative effect of treaties since the contested decision denies the Sahrawi people's status of third party to EU-Morocco relations and imposes international obligations on the Sahrawi people concerning its national territory and its natural resources, without its consent.

10. Tenth plea in law, alleging violations of international humanitarian law and international criminal law since:

— first, the contested decision concludes an international agreement applicable to Western Sahara although the Moroccan occupying forces do not have *jus tractatus* with regard to that territory and are prohibited from exploiting its natural resources;

— secondly, pursuant to the agreement concluded by the contested decision, the European Union will subsidise Moroccan infrastructure in occupied Sahrawi territory, so that the Kingdom of Morocco may durably establish its own civilian population and its own armed forces there;

— thirdly, by using the expressions 'the people of Western Sahara' and 'the people concerned', the contested decision is endorsing the illegal transfer of Moroccan settlers to occupied Sahrawi territory.

11. Eleventh plea in law, alleging breach, on the part of the Union, of its obligations under the law of international responsibility since, by concluding an international agreement with the Kingdom of Morocco that is applicable to Western Sahara, the contested decision is endorsing serious violations of international law committed by the Moroccan occupying forces against the Sahrawi people and supporting the situation arising from those violations.

Action brought on 12 June 2019 — Polisario Front v Council

(Case T-356/19)

(2019/C 270/36)

Language of the case: French

Parties

Applicant: Popular Front for the Liberation of Saguia el-Hamra and Rio de Oro (Polisario Front) (represented by: G. Devers, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— declare its action for annulment admissible;

— annul the contested regulation;

— order the Council to pay the costs.

Pleas in law and main arguments

In support of the action brought against Council Regulation (EU) 2019/440 of 29 November 2018 on the allocation of fishing opportunities under the Sustainable Fisheries Partnership Agreement between the European Union and the Kingdom of Morocco and the Implementation Protocol thereto (OJ 2019 L 77, p.1), the applicant relies on a single plea in law, alleging lack of legal basis of that regulation on account of the illegality of Decision 2019/441.

That plea is divided into eleven parts which are essentially identical to the eleven pleas in Case T-344/19, *Polisario Front* v *Council*.

Action brought on 13 June 2019 — Groupe Canal + v Commission

(Case T-358/19)

(2019/C 270/37)

Language of the case: French

Parties

Applicant: Groupe Canal + (Issy-les-Moulineaux, France) (represented by: P. Wilhelm, P. Gassenbach and O. de Juvigny, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the action admissible and well-founded;

— annul, on the basis of Article 263 TFEU, the Commission Decision of 7 March 2019 in Case AT.40023 so far as concerns the French market and the existing and future contracts of Groupe Canal +;

— order the Commission to pay all of the costs incurred by the company Groupe Canal +.

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 misuse of powers by the Commission in so far as the commitments, which it rendered binding, for the purposes of ending geo-blocking in the field of cinema interfere with the legislative reforms recently adopted by the EU legislature.

2. Second plea in law, alleging that the Commission made a manifest error of assessment in relation to Article 101(1) TFEU in so far as it found that the commitments proposed by NBCUniversal, Sony Pictures, Warner Bros and Sky do not affect the cultural diversity and more generally the financing and exploitation of films in the European Economic Area.

3. Third plea in law, alleging infringement of the principle of proportionality in that the Commission made binding a number of commitments which were manifestly disproportionate to the competition concerns raised and which infringed the interests of third parties.

Action brought on 19 June 2019 — Camerin v Commission

(Case T-367/19)

(2019/C 270/38)

Language of the case: French

Parties

Applicant: Laure Camerin (Bastia, France) (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the application admissible and well-founded;

— consequently, annul the contested decision in part;

— order compensation for non-material damage caused by a series of measures and actions of the PMO which must be the subject of a global assessment and which the applicant estimates at the sum ex aequo et bono of EUR 50 000;

— order the Commission to pay all of the costs.

Pleas in law and main arguments

In support of the action against the decision of the 'Administration and Payment of Individual Entitlements' Office' ('the PMO') — relating to the implementation of a garnishee order issued by a Belgian court, in that the PMO still reserves the right to deduct the sum of EUR 3 839,60 from the pension payments that the applicant is yet to receive — the applicant relies on four pleas in law.

1. First plea in law, alleging infringement of Articles 1 and 25 of the Charter of Fundamental Rights of the European Union and of Article 6 of Annex VIII to the Staff Regulations of Officials of the European Union ('the Staff Regulations') and alleging an error of assessment. In that connection, the applicant claims that there is neither any reason nor legal basis which justifies the decision of the PMO to continue to seize more than two thirds of her pension.

2. Second plea in law, alleging infringement of the principle of legality and legal certainty. According to the applicant, the Staff Regulations are a 'lex specialis' which has primacy over any other national law: as regards the minimum subsistence figure there are thus substantive provisions of the Staff Regulations that derogate both from general EU employment law and national employment law.

3. Third plea in law, alleging infringement of the principle of sound administration and duty of care in that no statement of reasons has been provided in relation to the facts or evidence which could justify the decision adopted by the PMO by which it still reserves the right to deduct the sum of EUR 3 839,60 from the pension payments that the applicant is yet to receive.

4. Fourth plea in law, alleging infringement of the principle of equality and non-discrimination, in particular in so far as, if the interpretation of PMO were to be followed, the minimum subsistence figure would depend on the country where the public official resided.

   The applicant also seeks compensation for the non-material damage that she claims to have suffered as a result of irregularities allegedly committed by the PMO which make it impossible for her to live in dignity.

Action brought on 18 June 2019 — Datenlotsen Informationssysteme v Commission

(Case T-368/19)

(2019/C 270/39)

Language of the case: German

Parties

Applicant: Datenlotsen Informationssysteme GmbH (Hamburg, Germany) (represented by: T. Lübbig, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare that the defendant has failed to comply with its obligations under Article 108 TFEU in so far as it failed to close the formal investigation procedure in Case SA.34402 (2015/C ex 2012/NN) by means of a decision within a reasonable time in accordance with Article 108(2) TFEU and Article 9(1) of Regulation 2015/1589; ([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 the following pleas in law.

1. Infringement of Article 108 TFEU through a failure to close the formal investigation procedure

— In its first plea in law the applicant argues that the procedure length of over seven years must be held to be unreasonable. In this regard the applicant argues that, in the light of the extensive information available to the defendant and the small number of open questions, a decision should already have been taken. Further, a decision must be taken shortly due to the applicant's urgent financial needs.

2. Infringement of the right to have one's case heard within a reasonable period as part of the right to good administration under Article 41 of the Charter of Fundamental Rights of the European Union

— In its second plea in law the applicant puts forward arguments that, in essence, are identical or similar to the arguments relied on in the first plea in law.

3. Infringement of Article 41 of the Charter of Fundamental Rights of the European Union, in conjunction with Article 20 of that charter

— In its third plea in law the applicant principally claims that, due to various measures leading to delays in procedure, the defendant infringed the Code of Best Practices for the conduct of State aid control procedures.

4. Infringement of the right to be given reasons as part of the right to an effective remedy under Articles 47 and 41(2)(c) of the Charter of Fundamental Rights of the European Union

— In its fourth plea in law the applicant argues that the defendant could not automatically have assumed that further investigation was necessary and should have substantiated and explained the need for such investigations.

([1]) Council Regulation (EU) 2015/1589 of 13 July 2015 laying down detailed rules for the application of Article 108 of the Treaty on the Functioning of the European Union (OJ 2015 L 248, p. 9).

Action brought on 20 June 2019 — Pisoni v Parliament

(Case T-375/19)

(2019/C 270/40)

Language of the case: Italian

Parties

Applicant: Ferruccio Pisoni (Trento, Italy) (represented by: M. Paniz, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the communication of the European Parliament Directorate-General for Finance implementing Resolution No 14/2018 of 12 July 2018 of the Office of the President of the Italian Chamber of Deputies and/or Resolution No 6/2018 of the Presidential Council of the Senate of the Italian Republic, and, in any event,

— annul the redetermination and recalculation of the life annuity disbursed by the European Parliament;

— accordingly, declare that the applicant is entitled to the maintenance of the life annuity in question in so far as it was accrued and is being accrued on the basis of the legislation in force prior to Resolution No 14/2018 of the Office of the President of the Italian Chamber [of Deputies] and/or Resolution No 6/2018 of the Presidential Council of the Senate of the Italian Republic, and order the European Parliament to pay him all the sums unduly withheld, adjusted for inflation, together with statutory interest from the date of withholding until the date of payment;

— order the European Parliament to implement the judgment and immediately to restore in full the original amount of the life annuity, and to pay compensation for all damages if and to the extent that damages are payable to the applicant; and,

— in any event, order the Parliament to pay all costs, lawyers' fees, plus VAT, taxes, duties and flat-rate charges.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-345/19, *Santini* v *Parliament*

Action brought on 21 June 2019 — Topcart v EUIPO — Carl International (TC CARL)

(Case T-377/19)

(2019/C 270/41)

Language in which the application was lodged: German

Parties

Applicant: Topcart GmbH (Wiesbaden, Germany) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carl International (Limonest, France)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark TC CARL — Application No 14 957 542

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 April 2019 in Case R 1826/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 60(1)(a), in conjunction with Article 8(1)(b), of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2019 — Topcart v EUIPO — Carl International (TC CARL)

(Case T-378/19)

(2019/C 270/42)

Language in which the application was lodged: German

Parties

Applicant: Topcart GmbH (Wiesbaden, Germany) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carl International (Limonest, France)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for EU word mark TC CARL — Application No 15 048 556

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 2 April 2019 in Case R 1617/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 60(1)(a), in conjunction with Article 8(1)(b), of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2019 — Serviceplan Gruppe für innovative Kommunikation v EUIPO (Serviceplan)

(Case T-379/19)

(2019/C 270/43)

Language of the case: German

Parties

Applicant: Serviceplan Gruppe für innovative Kommunikation GmbH & Co KG (Munich, Germany) (represented by: B. Koch and P. Schmitz, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark Serviceplan — Application No 15 234 669

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 March 2019 in Case R 1424/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismisses the appeal;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2019 — Serviceplan Gruppe für innovative Kommunikation v EUIPO (Serviceplan Solutions)

(Case T-380/19)

(2019/C 270/44)

Language of the case: German

Parties

Applicant: Serviceplan Gruppe für innovative Kommunikation GmbH & Co KG (Munich, Germany) (represented by: B. Koch and P. Schmitz, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for EU word mark Serviceplan Solutions — Application No 15 244 742

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 25 March 2019 in Case R 1427/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismisses the appeal;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 7(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2019 — adp Gauselmann v EUIPO — Gameloft (City Mania)

(Case T-381/19)

(2019/C 270/45)

Language of the case: English

Parties

Applicant: adp Gauselmann GmbH (Lübbecke, Germany) (represented by: P. Koch Moreno, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gameloft SE (Paris, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for European Union word mark City Mania — Application for registration No 15 936 339

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 11 April 2019 in Case R 976/2018-2

Form of order sought

The applicant claims that the Court should:

— declare the ground of appeal to be founded and annul the contested decision, declare the existence of likelihood of confusion between the trade marks in dispute, and accordingly, order the complete rejection of the requested trade mark;

— order EUIPO and the opposing party, should it appear in the proceedings before the General Court, to bear the costs.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 25 June 2019 — Turk Hava Yollari v EUIPO — Sky (skylife)

(Case T-382/19)

(2019/C 270/46)

Language of the case: English

Parties

Applicant: Turk Hava Yollari AO (Istanbul, Turkey) (represented by: R. Almaraz Palmero, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

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

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant before the General Court

Trade mark at issue: International registration designating the European Union in respect of the word mark skylife — International registration designating the European Union No 898 322

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 23 April 2019 in Case R 880/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to declare valid the contested international trademark registration No. 898 322 for all the goods and services as registered in classes 39 and 41;

— order EUIPO and the intervener, Sky Limited, to pay all the costs of the dispute before the General Court, including those relating to the procedure before the Fourth Board of Appeal.

Pleas in law

— Infringement of Article 60(1)(a) in conjunction with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 21 June 2019 — CI and Others v Parliament and Council

(Case T-383/19)

(2019/C 270/47)

Language of the case: French

Parties

Applicants: CI, CJ, CK, CL and CN (represented by: J. Fouchet, lawyer)

Defendants: European Parliament and Council of the European Union

Form of order sought

— annul Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union;

— order the Council of the European Union and the European Parliament to pay the costs of the proceedings in full, including legal fees of EUR 5 000.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement by Regulation (EU) 2019/592 of the acquired rights derived from European citizenship.

   In the first place, the applicants are of the opinion that the Parliament and the Council infringed their right to respect for private and family life in that for over fifteen years they have established their lives in another Member State of the European Union, a State with which they have a close connection: some of the applicants have spouses and children who are nationals from another Member State or they own property in another Member State.

   In the second place, the applicants take the view that the contested regulation infringes the principle of equality since it recognises that the rights they derive from their European citizenship will cease without making any distinction between citizens subject to the rule depriving them of their right to vote after residing for fifteen years outside the United Kingdom and other citizens.

2. Second plea in law, alleging infringement by the contested regulation of the status of Gibraltar, in that the reference to Gibraltar in the contested regulation as a 'colony of the British Crown' can only create an unfavourable climate for conciliation between Spain and the United Kingdom to the detriment of the rights of the inhabitants of Gibraltar.

3. Third plea in law, alleging infringement of the visa exemption granted to British citizens by Regulation 2018/1240, on the ground that the applicants will have to apply for an ETIAS travel authorisation and that there is therefore a possibility that they be denied that authorisation.

Action brought on 25 June 2019 — Mazzone v Parliament

(Case T-385/19)

(2019/C 270/48)

Language of the case: Italian

Parties

Applicant: Antonio Mazzone (Naples, Italy) (represented by: M. Paniz, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the communication of the European Parliament Directorate-General for Finance implementing Resolution No 14/2018 of 12 July 2018 of the Office of the President of the Italian Chamber of Deputies and/or Resolution No 6/2018 of the Presidential Council of the Senate of the Italian Republic, and, in any event,

— annul the redetermination and recalculation of the life annuity disbursed by the European Parliament;

— accordingly, declare that the applicant is entitled to the maintenance of the life annuity in question in so far as it was accrued and is being accrued on the basis of the legislation in force prior to Resolution No 14/2018 of the Office of the President of the Italian Chamber [of Deputies] and/or Resolution No 6/2018 of the Presidential Council of the Senate of the Italian Republic, and order the European Parliament to pay him all the sums unduly withheld, adjusted for inflation, together with statutory interest from the date of withholding until the date of payment;

— order the European Parliament to implement the judgment and immediately to restore in full the original amount of the life annuity, and to pay compensation for all damages if and to the extent that damages are payable to the applicant; and,

— in any event, order the Parliament to pay all costs, lawyers' fees, plus VAT, taxes, duties and flat-rate charges.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-345/19, *Santini* v *Parliament*

Action brought on 28 June 2019 — Puigdemont i Casamajó and Comín i Oliveres v Parliament

(Case T-388/19)

(2019/C 270/49)

Language of the case: English

Parties

Applicants: Carles Puigdemont i Casamajó (Waterloo, Belgium) and Antoni Comín i Oliveres (Waterloo) (represented by: P. Bekaert, lawyer, B. Emmerson QC, G. Boye and S. Bekaert, lawyers)

Defendants: European Parliament

Form of order sought

The applicants claim that the Court should:

— annul the Parliament's decision to deny the applicants' access to the special reception service set up for elected members of Parliament and the instruction of the President of the Parliament of 29 May 2019, which prevented them from submitting the written declaration required by Rule 3(2) of the Rules of Procedure;

— annul the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and the subsequent decision to take note of a different and incomplete list of elected members notified on 17 June 2019 by the Spanish authorities, which does not include the applicants;

— annul the Parliament's decision to treat the communication of the Spanish Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected members of Parliament, which amounts to an unlawful declaration of a vacancy that violates Article 13 of the 1976 Electoral Act, attributable to the Parliament;

— annul the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, refusing to guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the applicants to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting and until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain;

— annul the President of the Parliament's decision, as confirmed by the letter without legal basis of the President of the Parliament of 27 June 2019, refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, in accordance with Rule 8 of the Rules of Procedure;

— order the defendant to pay all costs of these proceedings, and in accordance with Article 340, second paragraph, TFEU, order the defendant to pay compensation for the damages suffered: the loss of monthly salary granted to the members of the European Parliament, plus 1 symbolic euro for the moral damages.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Parliament's decision to deny the applicants access to the special reception service set up for elected members of Parliament and the instruction of the President of the Parliament of 29 May 2019 infringe Articles 20, 21 and 39(2) of the Charter of Fundamental Rights of the European Union ('Charter').

2. Second plea in law, alleging that the Parliament's decision not to take note of the results officially declared by Spain of the election to the European Parliament of 26 May 2019, and the subsequent decision to take note of a different and incomplete list of elected members notified on 20 June 2019 by the Spanish authorities, which does not include the applicants, infringe Article 12 of the 1976 Electoral Act and Article 3(2) of the European Council Decision 2018/937 ([1]), in connection with Article 39(2) of the Charter, Article 10(1) and (2) TEU, Article 14(2) and (3) TEU and Article 1(3) of the 1976 Electoral Act.

3. Third plea in law, alleging that the Parliament's decision to treat the communication of the Spanish Electoral Commission of 20 June 2019 as depriving of effect the declaration of the applicants as elected members of Parliament, amounts to an unlawful declaration of a vacancy that violates Article 13 of the 1976 Electoral Act, attributable to Parliament, that infringes Articles 6(2), 8 and 13 of the 1976 Electoral Act, in connection with Article 39(2) of the Charter, Article 10(1) and (2) TEU, Article 14(2) and (3) TEU and Article 1(3) of the 1976 Electoral Act.

4. Fourth plea in law, alleging that the Parliament's decision refusing to guarantee, pursuant to Rule 3(2) of its Rules of Procedure, the right of the applicants to take their seats in Parliament and on its bodies and to enjoy all the rights attaching thereto from the date of the first sitting and until a ruling has been given on the disputes referred both to Parliament and to the judicial authorities of Spain, infringes Rule 3(2) of the Rules of Procedure of the European Parliament and Articles 5(1) and 12 of the 1976 Electoral Act, in connection with Article 39(2) of the Charter, Article 10(1) and (2) TEU, Article 14(2) and (3) TEU and Article 1(3) of the 1976 Electoral Act.

5. Fifth plea in law, alleging that the President's decision refusing to assert the privileges and immunities of the applicants under Article 9 of Protocol (No 7) on the Privileges and Immunities of the European Union, infringes Rule 5(2) of the Rules of Procedure of the European Parliament, Article 6(2) of the 1976 Electoral Act and Article 9 of the said Protocol in connection with Article 39(2) of the Charter, Article 10(1) and (2) TEU, Article 14(2) and (3) TEU, and Article 1(3) of the 1976 Electoral Act.

([1]) European Council Decision (EU) 2018/937 of 28 June 2018 establishing the composition of the European Parliament (OJ L 165I, 2.7.2018, p. 1).

Action brought on 27 June 2019 — Coppo Gavazzi v Parliament

(Case T-389/19)

(2019/C 270/50)

Language of the case: Italian

Parties

Applicant: Maria Teresa Coppo Gavazzi (Milan, Italy) (represented by: M. Merola, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare non existent or annul in its entirety the measure of which the applicant was informed by means of the contested communication, in which the European Parliament redetermined retirement pension rights and ordered recovery of the amount paid on the basis of the earlier pension calculation;

— order the European Parliament to refund all the sums unduly withheld, and to pay statutory interest from the date of withholding to the date of payment and order the European Parliament to implement the judgment and undertake all the necessary initiatives, acts or measures to ensure the immediate, full re-establishment of the original pension amount;

— order the European Parliament to pay the costs of the legal proceedings.

Pleas in law and main arguments

The present action is directed against the act by which the European Parliament redetermined the rights to a retirement pension of the applicant following the entry into force on 1 January 2019 of Resolution No 14/18 of the Office of the President of the Italian Chamber of Deputies and the recovery of the amount paid, paid on the basis of the earlier determination.

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

1. By the first plea in law, the applicant claims incompetence on the part of the author of the act, infringement of essential procedural requirements and the consequent infringement of Article 41 of the Charter of Fundamental Rights.

   — The applicant claims in that regard that the communication of the European Parliament is unlawful, since it is vitiated by serious and clear omissions, of a principally procedural nature, and, in particular, the decision was adopted by the Directorate-General for Finance and not by the Bureau of the European Parliament in accordance with Article 11a°(6) and Article 25(3) of the European Parliament's Rules of Procedure. The communication did not contain any justification for its adoption or for the automatic application of the Italian resolution.

2. By the second plea in law, the applicant claims that there is no legal basis for the contested act and that there was an error of law in the interpretation of Article 75 of the Implementing measures for the Statute for Members of the European Parliament

   — The applicant claims in that regard that the contested act erroneously refers to Annex II to the Rules governing the payment of expenses and allowances to Members of the European Parliament and Article 75 of the Implementing measures for the Statute for Members of the European Parliament. The pension scheme provided for by those rules expired on 14 July 2009, with the entry into force of the Statute for Members of the European Parliament. Article 75 of the Statute, which refers to Annex III to the Rules governing the payment of expenses and allowances to Members of the European Parliament, does not authorise the European Parliament to adopt measures such as that contested.

3. By the third plea in law, the applicant claims that the communication clearly infringes the statutory reservation of powers established in Article 75(2) of the Statute, which refers expressly to the conditions laid down by national law, thereby rendering internal resolutions of the Chamber of Deputies of a Member State irrelevant.

   — The applicant claims in this regard that the amendments referred to in Resolution No 14/2018 of the Office of the President of the Italian Chamber of Deputies were not adopted by means of a national law, but by a mere decision of the Office of the President of the Italian Chamber of Deputies.

4. By the fourth plea in law, the applicant alleges clear infringement of the general principles of EU law, such as the principles of legal certainty, legitimate expectations, protection of acquired rights and the principle of equality.

   — The applicant claims in that regard that the contested resolution seriously undermines the confidence of former Members in the inalienability of their previously acquired rights, and the expectations arising on the basis of the legal framework in force at the time of their mandate. In addition, the considerable reduction in the emoluments of former parliamentarians on the basis of the earlier rules is not supported by any appropriate legal justification or overriding requirement as stated in the case-law of the Court of Justice and of the European Court of Human Rights.

Action brought on 27 June 2019 — Muscardini v Parliament

(Case T-390/19)

(2019/C 270/51)

Language of the case: Italian

Parties

Applicant: Cristiana Muscardini (Milan, Italy) (represented by: M. Merola, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare non existent or annul in its entirety the measure of which the applicant was informed by means of the contested communication, in which the European Parliament redetermined retirement pension rights and ordered recovery of the amount paid on the basis of the earlier pension calculation;

— order the European Parliament to refund all the sums unduly withheld, and to pay statutory interest from the date of withholding to the date of payment and order the European Parliament to implement the judgment and undertake all the necessary initiatives, acts or measures to ensure the immediate, full re-establishment of the original pension amount;

— order the European Parliament to pay the costs of the legal proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-389/19 *Coppo Gavazzi* v *Parliament*

Action brought on 27 June 2019 — Vinci v Parliament

(Case T-391/19)

(2019/C 270/52)

Language of the case: Italian

Parties

Applicant: Luigi Vinci (Milan, Italy) (represented by: M. Merola, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare non existent or annul in its entirety the measure of which the applicant was informed by means of the contested communication, in which the European Parliament redetermined retirement pension rights and ordered recovery of the amount paid on the basis of the earlier pension calculation;

— order the European Parliament to refund all the sums unduly withheld, and to pay statutory interest from the date of withholding to the date of payment and order the European Parliament to implement the judgment and undertake all the necessary initiatives, acts or measures to ensure the immediate, full re-establishment of the original pension amount;

— order the European Parliament to pay the costs of the legal proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-389/19 *Coppo Gavazzi* v *Parliament*.

Action brought on 27 June 2019 –Mantovani v Parliament

(Case T-392/19)

(2019/C 270/53)

Language of the case: Italian

Parties

Applicant: Agostino Mantovani (Brescia, Italy) (represented by: M. Merola, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— declare non existent or annul in its entirety the measure of which the applicant was informed by means of the contested communication, in which the European Parliament redetermined retirement pension rights and ordered recovery of the amount paid on the basis of the earlier pension calculation;

— order the European Parliament to refund all the sums unduly withheld, and to pay statutory interest from the date of withholding to the date of payment and order the European Parliament to implement the judgment and undertake all the necessary initiatives, acts or measures to ensure the immediate, full re-establishment of the original pension amount;

— order the European Parliament to pay the costs of the legal proceedings.

Pleas in law and main arguments

The pleas in law and main arguments are similar to those raised in Case T-389/19 *Coppo Gavazzi* v *Parliament*.

Action brought on 28 June 2019 — Iccrea Banca v SRB

(Case T-400/19)

(2019/C 270/54)

Language of the case: Italian

Parties

Applicant: Iccrea Banca SpA Istituto Centrale del Credito Cooperativo (Rome, Italy) (represented by P. Messina, F. Isgrò and A. Dentoni Litta, lawyers)

Defendant: Single Resolution Board

Form of order sought

The applicant claims that the Court should:

a) principally:

— annul the decision of the Single Resolution Board SRB/ES/SRF/2019/10 of 16 April 2019 and, as appropriate, the annexes to that decision, as well as any other decisions of the Single Resolution Board even those of which the applicant is unaware, on the basis of which the Banca d'Italia (Bank of Italy) adopted decisions Nos 0543938/19 of 24 April 2019 and 0733800/19 of 7 June 2019;

— order the payment of compensation to Iccrea Banca for the damage caused to it, in terms of higher rates paid, by the Single Resolution Board when determining the contributions owed by the applicant.

b) in the alternative, and in the event that the above claims are rejected:

— declare invalid Article 5(1)(a) and (f) of Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements, ([1]) as being contrary to the fundamental principles of Community law, in particular the principles of equality, non-discrimination and proportionality, as enshrined in Article 2 TEU and interpreted by the Court of Justice of the European Union.

c) in any event, order the Single Resolution Board to pay the costs of the present proceedings.

Pleas in law and main arguments

The action is directed against the decision of the Single Resolution Board SRB/ES/SRF/2019/10 of 16 April 2019 and the relevant annexes thereto as well as any subsequent decisions of the Single Resolution Board, including those of which the applicant is unaware, on the basis of which the contributions under Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to ex ante contributions to resolution financing arrangements were determined with regard to the applicant.

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

1. First plea in law, alleging (i) failure to carry out a proper inquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](a) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](a) of Regulation 2015/63 when determining the amount of the contributions owed by the applicant by not having taken intragroup liabilities into consideration.

2. Second plea in law, alleging (i) failure to carry out a proper inquiry, (ii) error of assessment of the facts, (iii) infringement and misapplication of Article 5[(1)](f) of Regulation 2015/63, and (iv) infringement of the principles of non-discrimination and sound administration.

   — The applicant claims in this regard that the Single Resolution Board erred in its application of Article 5[(1)](f) of Regulation 2015/63, thereby resulting in double counting.

3. Third plea in law, alleging the unlawful conduct of an EU body giving rise to non-contractual liability under Article 268 TFEU

   — The applicant claims in this regard that the conduct of the Single Resolution Board meets all the relevant conditions for non-contractual liability under EU case-law, namely unlawfulness of the alleged conduct of the institutions, the actual existence of damage, and the presence of a causal link between the adopted conduct and the alleged damage.

4. Fourth plea in law, in the alternative and incidentally, alleging that Regulation 2015/63 infringes the principles of effectiveness, equivalence and equal treatment and is consequently inapplicable.

   — The applicant claims in that regard that a possible contradiction between that regulation and the situation of the applicant would infringe the abovementioned principles to the extent that persons in the same factual situation as Iccrea would be subject to reductions of contributions, leading to an unlawful deterioration of the applicant's situation, with the consequence that similar situations would be treated differently.

([1]) OJ 2015 L 11, p. 44.

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