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COURT OF JUSTICE OF THE EUROPEAN UNION

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(2023/C 189/01)

Last publication

OJ C 179, 22.5.2023

Past publications

OJ C 173, 15.5.2023

OJ C 164, 8.5.2023

OJ C 155, 2.5.2023

OJ C 134, 17.4.2023

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These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Grand Chamber) of 18 April 2023 (request for a preliminary ruling from the Corte costituzionale — Italy) — Execution of a European arrest warrant issued against E.D.L.

(Case C-699/21, [1] **E.D.L. (Ground for refusal based on illness))**

(Reference for a preliminary ruling — Judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Article 1(3) — Article 23(4) — Surrender procedures between Member States — Grounds for non-execution — Article 4(3) TEU — Duty of sincere cooperation — Postponement of the execution of the European arrest warrant — Article 4 of the Charter of Fundamental Rights of the European Union — Prohibition of inhuman or degrading treatment — Serious, chronic and potentially irreversible illness — Risk of serious harm to health affecting the person concerned by the European arrest warrant)

(2023/C 189/02)

Language of the case: Italian

Referring court

Corte costituzionale

Parties to the main proceedings

Applicant: E.D.L.

Intervener: Presidente del Consiglio dei Ministri

Operative part of the judgment

Articles 1(3) and 23(4) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Article 4 of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that:

— where there are substantial grounds to believe that the surrender of a requested person in execution of a European arrest warrant manifestly risks endangering his or her health, the executing judicial authority may, exceptionally, postpone that surrender temporarily;

— where the executing judicial authority called upon to decide on the surrender of a requested person who is seriously ill in execution of a European arrest warrant concludes that there are substantial and established grounds for believing that that surrender would expose that person to a real risk of a significant reduction in his or her life expectancy or of a rapid, significant and irreversible deterioration in his or her state of health, it must postpone that surrender and ask the issuing judicial authority to provide all information relating to the conditions under which it intends to prosecute or detain that person and to the possibility of adapting those conditions to his or her state of health in order to prevent such a risk from materialising;

— if, in the light of the information provided by the issuing judicial authority and all the other information available to the executing judicial authority, it appears that that risk cannot be ruled out within a reasonable period of time, the executing judicial authority must refuse to execute the European arrest warrant. On the other hand, if that risk can be ruled out within such a period of time, a new surrender date must be agreed with the issuing judicial authority.

(1) OJ C 73, 14.2.2022.

Judgment of the Court (Third Chamber) of 18 April 2023 (request for a preliminary ruling from the Tribunal de première instance francophone de Bruxelles — Belgium) — X, Y, A, legally represented by X and Y, B, legally represented by X and Y v État belge

(Case C-1/23 PPU, [1] **Afrin** [2]**)**

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Border controls, asylum and immigration — Immigration policy — Directive 2003/86/EC — Right to family reunification — Article 5(1) — Submission of an application for entry and residence for the purposes of exercising the right to family reunification — Legislation of a Member State requiring the sponsor's family members to submit the application in person to the competent diplomatic post of that Member State — Impossibility or excessive difficulty to reach that post — Charter of Fundamental Rights of the European Union — Articles 7 and 24)

(2023/C 189/03)

Language of the case: French

Referring court

Tribunal de première instance francophone de Bruxelles

Parties to the main proceedings

Applicants: X, Y, A, legally represented by X and Y, B, legally represented by X and Y

Defendant: État belge

Operative part of the judgment

Article 5(1) of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, read in conjunction with Article 7 and Article 24(2) and (3) of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that it precludes national legislation which requires, for the purposes of submitting an application for entry and residence with a view to family reunification, that the sponsor's family members, in particular those of a recognised refugee, appear in person at the diplomatic or consular post of a Member State competent in respect of the place of their temporary or permanent residence abroad, including in a situation where it is impossible or excessively difficult for them to travel to that post, without prejudice to the possibility for that Member State to require that those members appear in person at a later stage of the application procedure for family reunification.

(1) OJ C 104, 20.3.2023.

(2) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Order of the Court (Sixth Chamber) of 20 April 2023 (request for a preliminary ruling from the Zemgales rajona tiesa — Latvia) — SIA 'Sinda & V R' v Rīgas domes Satiksmes departaments

(Case C-619/22, [1] **Sinda & V R)**

(Reference for a preliminary ruling — Article 53(2) and Article 94 of the Rules of Procedure of the Court of Justice — Requirement to provide the legislative context of the dispute in the main proceedings — Requirement to set out the relationship between the provisions of European Union law of which an interpretation is sought and the applicable national legislation — Lack of sufficient information — Manifest inadmissibility)

(2023/C 189/04)

Language of the case: Latvian

Referring court

Zemgales rajona tiesa

Parties to the main proceedings

Applicant: SIA 'Sinda & V R'

Defendant: Rīgas domes Satiksmes departaments

Operative part of the order

The request for a preliminary ruling made by the Zemgales rajona tiesa (District Court, Zemgale, Latvia), by decision of 20 September 2022, is manifestly inadmissible.

[1] Date lodged: 27.9.2022.

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 16 November 2022 — WU v Directie van het Centraal Bureau Rijvaardigheidsbewijzen (CBR)

(Case C-703/22)

(2023/C 189/05)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: WU

Respondent: Directie van het Centraal Bureau Rijvaardigheidsbewijzen (CBR)

Questions referred

1. Should point 6.4 of Annex III to Directive 2006/126/EC, [1] more specifically the standard of a horizontal field of vision of both eyes of at least 160°, read in the light of the principle of proportionality, be interpreted as meaning that a person who does not meet this standard from a medical point of view, but who, according to different medical experts, is actually fit to drive a lorry, can nevertheless meet the standard?

2. If the answer to that question is in the negative, can a proportionality assessment be carried out within the framework of the Driving Licence Directive in an individual case, even if the criterion laid down in point 6.4 of Annex III to Directive 2006/126/EC does not provide any scope for exemption in such cases?

3. If so, what are the circumstances that may play a role in assessing whether there may be derogation from the standard for the field of vision in a specific case, provided for in point 6.4 of Annex III to Directive 2006/126/EC?

[1] OJ 2006 L 403, p. 18 (also 'the Driving Licence Directive').

Request for a preliminary ruling from the Raad van State (Netherlands) lodged on 17 November 2022 — Minister van Infrastructuur en Waterstaat v AVROTROS

(Case C-707/22)

(2023/C 189/06)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Appellant: Minister van Infrastructuur en Waterstaat

Respondent: AVROTROS

Other parties: Bestuur van de Luchtverkeersleiding Nederland, Royal Schiphol Group NV/Schiphol Nederland BV

Questions referred

1. a. What is to be understood by 'details of occurrences' and 'appropriate confidentiality' as referred to in Article 15(1) of the Occurrence Reporting Regulation [1] and in the light of the right to freedom of expression and information enshrined in Article 11 of the EU Charter and Article 10 ECHR?

   b. Does aggregated information fall under 'details of occurrences' as referred to in Article 15(1) of the Occurrence Reporting Regulation?

2. a. Is Article 15(1) of the Occurrence Reporting Regulation, in the light of the right to freedom of expression and information enshrined in Article 11 of the EU Charter and Article 10 ECHR, to be interpreted as being compatible with a national rule, such as that at issue in the main proceedings, by virtue of which no information received from reported occurrences may be disclosed?

   b. Does this also apply to aggregated data on reported occurrences?

3. If the answers to questions 2a and 2b are in the negative: is the competent national authority permitted to apply a general national rule on disclosure by virtue of which information is not disclosed if disclosure would be outweighed by the interests concerned with, for example, relations with other States and international organisations, with inspection, control and monitoring by administrative authorities, with respect for privacy and with preventing natural and legal persons from being disproportionately advantaged and disadvantaged?

[1] Regulation (EU) No 376/2014 of the European Parliament and of the Council of 3 April 2014 on the reporting, analysis and follow-up of occurrences in civil aviation, amending Regulation (EU) No 996/2010 of the European Parliament and of the Council and repealing Directive 2003/42/EC of the European Parliament and of the Council and Commission Regulations (EC) No 1321/2007 and (EC) No 1330/2007 (OJ 2014 L 122, p. 18).

Request for a preliminary ruling from the Hof van beroep Antwerpen (Belgium) lodged on 24 November 2022 — Openbaar Ministerie, Federale Overheidsdienst Financiën v Profit Europe NV, Gosselin Forwarding Services NV

(Case C-719/22, *Openbaar Ministerie and Federale Overheidsdienst Financiën*)

(2023/C 189/07)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Applicants: Openbaar Ministerie, Federale Overheidsdienst Financiën

Defendants: Profit Europe NV, Gosselin Forwarding Services NV

Question referred

Do Regulation (EU) No 1071/2012 [1] and Regulation (EU) No 430/2013 [2] violate Articles 1, 5, 6 and 9 of Basic Regulation 1225/2009, [3] in so far as they subject imports of threaded tube or pipe cast fittings, of spheroidal graphite cast iron, originating in the People's Republic of China to anti-dumping duties upon import, when neither the complaint for the initiation of an anti-dumping proceeding nor the notice of initiation of the anti-dumping measure identified such goods as the product concerned, no evidence of dumping, injury and a causal link was produced and the European Commission did not in any way investigate their normal value, export price, possible margin of dumping, possible injury, the extent of the injury, the impact of other known factors on the injury, the causal link between dumping and injury and the need to subject those goods (threaded tube or pipe cast fittings) to anti-dumping duties in the interest of the Union?

(1) Commission Regulation (EU) No 1071/2012 of 14 November 2012 imposing a provisional anti-dumping duty on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand (OJ 2012 L 318, p. 10).

(2) Council Implementing Regulation (EU) No 430/2013 of 13 May 2013 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of threaded tube or pipe cast fittings, of malleable cast iron, originating in the People's Republic of China and Thailand and terminating the proceeding with regard to Indonesia (OJ 2013 L 129, p. 1).

(3) Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Community (OJ 2009 L 343, p. 51).

Appeal brought on 8 December 2022 by Shopify Inc. against the judgment of the General Court (Ninth Chamber) delivered on 12 October 2022 in Case T-222/21, Shopify v EUIPO — Rossi and Others (Shoppi)

(Case C-751/22 P)

(2023/C 189/08)

Language of the case: English

Parties

Appellant: Shopify Inc. (represented by: S. Völker and M. Pemsel, Rechtsanwälte)

Other parties: European Union Intellectual Property Office (EUIPO), Massimo Carlo Alberto Rossi, Salvatore Vacante and Shoppi Ltd.

Form of order sought

The appellant claims that the Court should:

— annul the judgment under appeal;

— annul the decision of the Second Board of Appeal of EUIPO of 18 February 2021 (Case R 785/2020-2) (the contested decision);

— order EUIPO and the interveners to pay the costs, including the costs for the proceedings before the General Court.

Plea in law and main arguments

In support of the appeal, the appellant relies on a single plea in law, namely infringement of Article 53(1)(a) of Regulation (EC) No 207/2009 [1] as amended by Regulation (EU) 2015/2424 [2] in conjunction with Article 8(1)(b) hereof.

The Appellant puts forth the following arguments.

The General Court disregarded the evidence of enhanced distinctiveness submitted by the appellant for the United Kingdom for the reason that the contested decision was rendered after the end of the transition period stipulated in Article 127 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ([3]). The General Court held that the appellant must be able to prohibit the use of later mark not only on its application date but also on the date of the decision of the Board of Appeal. Thus, the General Court held, essentially, that the conditions of a relative ground of refusal in invalidity proceedings must exist at the filing or priority date of the contested trademark and on the date of the decision of EUIPO (i.e. the Cancellation Division or the Board of Appeal).

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark (OJ 2009 L 78, p. 1).
([2]) Regulation (EU) 2015/2424 of the European Parliament and of the Council of 16 December 2015 amending Council Regulation (EC) No 207/2009 on the Community trade mark and Commission Regulation (EC) No 2868/95 implementing Council Regulation (EC) No 40/94 on the Community trade mark, and repealing Commission Regulation (EC) No 2869/95 on the fees payable to the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OJ 2015 L 341, p. 21).
([3]) OJ 2020 L 29, p. 7.

Appeal brought on 22 December 2022 by Zaun Ltd against the judgment of the General Court (Sixth Chamber) delivered on 19 October 2022 in Case T-231/21, Praesidiad v EUIPO — Zaun (Poteau)

(Case C-780/22 P)

(2023/C 189/09)

Language of the case: English

Parties

Appellant: Zaun Ltd (represented by: C. Weber, Rechtsanwalt)

Other parties to the proceedings: European Union Intellectual Property Office, Praesidiad Holding

By order of 17 April 2023, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Zaun Ltd should bear its own costs.

Request for a preliminary ruling from the Raad van State (Belgium) lodged on 10 January 2023 — Marvesa Rotterdam NV v Federaal Agentschap voor de veiligheid van de voedselketen (FAVV)

(Case C-7/23, Marvesa Rotterdam)

(2023/C 189/10)

Language of the case: Dutch

Referring court

Raad van State

Parties to the main proceedings

Applicant: Marvesa Rotterdam NV

Defendant: Federaal Agentschap voor de veiligheid van de voedselketen (FAVV)

Questions referred

1. Is Part I of the Annex to Decision 2002/994/EC ([1]) concerning certain protective measures with regard to the products of animal origin imported from China, as amended by Implementing Decision (EU) 2015/1068 ([2]) amending Decision 2002/994/EC concerning certain protective measures with regard to the products of animal origin imported from China, to be interpreted as meaning that the term 'fishery products' covers both products intended for human consumption and products intended for animal consumption, and that, therefore, fish oil intended for animal feed use can be regarded as a 'fishery product' within the meaning of the abovementioned annex?

2. If the answer to the first question is in the negative, does Part I of the Annex to Decision 2002/994/EC … infringe Article 22(1) of Council Directive 97/78/EC ([3]) of 18 December 1997 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, where appropriate read in conjunction with Article 1 of Protocol (No 2) to the TFEU on the application of the principles of subsidiarity and proportionality, in that fishery products for human consumption originating from China are exempt from the import ban laid down in Article 2 of Decision 2002/994/EC, whereas fishery products for animal consumption originating from China are subject to that import ban?

([1]) OJ 2002 L 348, p. 154.
([2]) OJ 2015 L 174, p. 30.
([3]) OJ 1998 L 24, p. 9.

Appeal brought on 28 January 2023 by Mendes SA against the judgment of the General Court (Ninth Chamber) delivered on 30 November 2022 in Case T-678/21, Mendes v EUIPO — Actial Farmaceutica Srl

(Case C-42/23 P)

(2023/C 189/11)

Language of the case: English

Parties

Appellant: Mendes SA (represented by: M. Cavattoni, avvocato)

Other parties to the proceedings: European Union Intellectual Property Office (EUIPO), Actial Farmaceutica Srl

By order of 19 April 2023, the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal was not allowed to proceed and that Mendes SA should bear its own costs.

Appeal brought on 1 February 2023 by Validity Foundation — Mental Disability Advocacy Centre against the order of the General Court (Seventh Chamber) delivered on 22 November 2022 in Case T-640/20, Validity v Commission

(Case C-51/23 P)

(2023/C 189/12)

Language of the case: English

Parties

Appellant: Validity Foundation — Mental Disability Advocacy Centre (represented by: B. Van Vooren, advocaat, and M.R. Oyarzabal Arigita, abogada)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the Appeal admissible and well-founded;

— set aside the Order of the General Court delivered on 22 November 2022 in Case T-640/20, Validity v Commission;

— grant the annulment of Commission Decision C(2020) 5540 final of 6 August 2020 and of Decision C(2021) 2834 final of 19 April 2021; and

— order the European Commission to pay the Applicant's costs; or

— in the alternative, remit the case to the General Court for a decision on its merits and reserve the costs

Pleas in law and main arguments

In their first plea in law, the Applicant contests the General Court's findings that there is no risk that the Commission will in the future breach Article 4(3) of the Regulation 1049/2001 (the 'Transparency Regulation') because:

i. the 'climate of mutual trust' ground does not constitute a general presumption of confidentiality; and

ii. there is no risk that the Commission will again rely on a vague ground, such as 'climate of mutual trust', in future document access requests.

In their second plea in law, the Applicant submits that the General Court erred in law when it concludes that there is no risk that there will be a repetition of the breaches of the principles of transparency, good administration, and procedural breaches of the Transparency Regulation that occurred in the procedure that gave rise to this proceedings.

Request for a preliminary ruling from the Curtea de Apel Pitești (Romania) lodged on 2 March 2023 — Asociația 'Forumul Judecătorilor din România', Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor' v Parchetul de pe lângă Înalta Curte de Casație și Justiție — Procurorul General al României

(Case C-53/23, Asociația 'Forumul Judecătorilor din România')

(2023/C 189/13)

Language of the case: Romanian

Referring court

Curtea de Apel Pitești

Parties to the main proceedings

Applicants: Asociația 'Forumul Judecătorilor din România', Asociația 'Mișcarea pentru Apărarea Statutului Procurorilor'

Defendant: Parchetul de pe lângă Înalta Curte de Casație și Justiție — Procurorul General al României

Questions referred

1. Do Article 2 and the second subparagraph of Article 19(1) TEU, read in conjunction with Articles 12 and 47 [of the] Charter of Fundamental Rights of the European Union, preclude the placing of limits on the bringing of certain legal proceedings by the professional associations of judges — aiming to promote and to protect the independence of the judiciary and the rule of law, and to safeguard the status of the profession — by introducing the condition that there must be a legitimate private interest which has been excessively restricted, on the basis of a binding decision of the High Court of Cassation and Justice, followed by a national practice in cases such as that in which the present question has been raised, which requires a direct link between the administrative act subject to judicial review by the courts and the direct purpose and objectives of the professional associations of judges, laid down in their articles of association, in cases where such associations seek to obtain effective judicial protection in matters governed by EU law, in accordance with the general purpose and objectives of the articles of association?

2. In the light of the answer to the first question, do Article 2, Article 4(3) and the second subparagraph of Article 19(1) TEU, Annex IX to the Act concerning the conditions of accession of Romania and Decision 2006/928 [1] preclude national legislation which limits the competence of the National Anti-Corruption Directorate by conferring exclusive competence to investigate corruption offences (in a broad sense) committed by judges and prosecutors upon certain prosecutors appointed for that purpose (by the Prosecutor General of Romania, acting on a proposal of the plenary assembly of the Supreme Council of Judiciary) in the public prosecutor's office attached to the High Court of Cassation and Justice and, respectively, in the public prosecutor's offices attached to the Courts of Appeal, the latter also being competent for the other categories of offences committed by judges and prosecutors?

(1) Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Request for a preliminary ruling from the Administrativen sad Haskovo (Bulgaria) lodged on 7 February 2023 — 'Ekostroy' EOOD v Agentsia 'Patna infrastruktura'

(Case C-61/23, Ekostroy)

(2023/C 189/14)

Language of the case: Bulgarian

Referring court

Administrativen sad Haskovo

Parties to the main proceedings

Appellant: 'Ekostroy' EOOD

Respondent: Agentsia 'Patna infrastruktura'

Question referred

Must Article 9a of Directive 1999/62/EC [1] of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures be interpreted as meaning that the requirement laid down in that article that penalties for infringements of the national provisions adopted pursuant to that directive must be proportionate precludes national legislation, such as that at issue in the main proceedings, which provides for the imposition of a flat-rate fine (on natural or legal persons) for infringements of the provisions relating to the obligation to ascertain and pay in advance a toll for the use of the road infrastructure, irrespective of the nature and gravity of the infringement, with the option of being exempted from liability to pay an administrative penalty through payment of a so-called 'redress charge'?

(1) OJ 1999 L 187, p. 42.

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 13 February 2023 — Cobult UG v TAP Air Portugal SA

(Case C-76/23, Cobult)

(2023/C 189/15)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Applicant: Cobult UG

Defendant: TAP Air Portugal SA

Question referred

Must Article 7(3) of Regulation (EC) No 261/2004 ([1]) be interpreted as meaning that a signed agreement of the passenger on the reimbursement of the cost of the ticket with a travel voucher within the meaning of the first indent of Article 8(1)(a) of Regulation (EC) No 261/2004 exists where the passenger selects a voucher of this type on the website of the operating air carrier to the exclusion of a subsequent refund of the cost of the ticket in monetary form and receives it by email, while reimbursement of the cost of the ticket in monetary form is only possible after first contacting the operating air carrier?

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

Request for a preliminary ruling from the Amtsgericht Steinfurt (Germany) lodged on 14 February 2023 — UE v Deutsche Lufthansa AG

(Case C-78/23, Deutsche Lufthansa)

(2023/C 189/16)

Language of the case: German

Referring court

Amtsgericht Steinfurt

Parties to the main proceedings

Applicant: UE

Defendant: Deutsche Lufthansa AG

Question referred

Does a change of booking notice with the wording set out below, followed by a list of the remaining outbound and return flight segments on the booking confirmation, satisfy the substantive requirements of a 'cancellation notice' for the purposes of Article 5(1)(c) of Regulation (EC) No 261/2004 ([1]) of the European Parliament and of the Council of 11 February 2004?

'Change of booking

[Name of air carrier] booking code: […]

(View/manage booking)

Dear customer,

Due to the coronavirus crisis, adjustments to our flight schedule are still necessary. These changes have also affected your itinerary.

We have tried to find the best possible connection for you and kindly ask you to check your revised booking. All remaining flights of your trip are listed and cancelled flights are not displayed.'

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

Request for a preliminary ruling from the Supremo Tribunal Administrativo (Portugal) lodged on 16 February 2023 — Companhia União de Crédito Popular, SARL v Autoridade Tributária e Aduaneira

(Case C-89/23, Companhia União de Crédito Popular)

(2023/C 189/17)

Language of the case: Portuguese

Referring court

Supremo Tribunal Administrativo

Parties to the main proceedings

Appellant: Companhia União de Crédito Popular, SARL

Respondent: Autoridade Tributária e Aduaneira

Question referred

For the purposes of determining whether the 11 % commission which the law (Article 25 of Decree-Law No 365/99 of 17 September 1999) allots to the lender for the sale of pledged goods is eligible for the exemption provided for in Article 135(1)(b) of the VAT Directive [1] (corresponding to Article 9(27)(a) of the Código do Imposto sobre o Valor Acrescentado (Value Added Tax Code)), can the sale of the pledged goods (Article 19 *et seq*. of Decree-Law No 365/99 of 17 September 1999), where the borrower fails to pay in accordance with the legal conditions, be regarded as an ancillary service to the services provided by the lender (activity of lending secured by a pledge)?

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

Action brought on 17 February 2023 — European Commission v Hungary

(Case C-92/23)

(2023/C 189/18)

Language of the case: Hungarian

Parties

Applicant: European Commission (represented by: U. Małecka, L. Malferrari and A. Tokár, acting as Agents)

Defendant: Hungary

Form of order sought

The Commission claims that the Court should:

(1) declare that

i) by adopting Decision 830/2020 of 8 September, by which Médiatanács (Media Council, Hungary) refused to extend Klubrádió's rights of use of radio frequencies,

ii) by adopting a statutory provision such as Article 48(7) of Law CLXXXV of 2010 which, in the event of repeated infringements, automatically precludes the extension of rights of use of radio frequencies for broadcasting services, even if the infringement was not particularly serious and was of a purely formal nature, and

iii) by thus preventing, in a disproportionate and discriminatory manner, the continuation of Klubrádió's operations within the radio broadcasting services sector,

Hungary has failed to fulfil its obligations under Articles 5, 7 and 10 of Directive 2002/20/EC, [1] Article 4, point 2, of Directive 2002/77/EC, [2] Article 9 of Directive 2002/21/EC, [3] the general principles of proportionality, non-discrimination and good faith, and Article 11 of the Charter of Fundamental Rights of the European Union;

iv) by failing to adopt, within the six-week period provided for in Article 5(3) of Directive 2002/20, a decision on the application for an extension of Klubrádió’s rights of use of radio frequencies, and

v) by failing to carry out a procedure for granting rights of use of the frequency previously used by Klubrádió within a period which would have allowed Klubrádió to obtain the decision before the expiry of its right of use,

Hungary has failed to fulfil its obligations under Articles 8 and 9 of Directive 2002/21, Article 5(3) of Directive 2002/20, and the general principle of good administration;

(vi) by publishing a call for tenders on 4 November 2020 and adopting Decision 180/2021 of 10 March, in which the Media Council

— imposed disproportionate conditions on the granting of radio spectrum,

— failed to define in advance the conditions for the granting of radio spectrum, and

— failed to exercise any discretion in assessing the seriousness and relevance of errors in applications that could affect their admissibility, and disregarded the insignificance of errors,

Hungary has failed to fulfil its obligations under Article 5(2) of Directive 2002/20, Article 45 of Directive (EU) 2018/1972 ([4]) and Article 11 of the Charter of Fundamental Rights of the European Union;

vii) by adopting a statutory provision such as Article 65(11) of Law CLXXXV of 2010, which precludes the possibility of applying for provisional rights of use where the communication services provider’s rights of use have not previously been extended, whereas it offers that possibility to providers which have already extended their rights of use once, without justifying that difference in treatment, and even though the grounds that preclude that extension do not preclude new rights of use from being granted, Hungary has failed to fulfil its obligations under Article 45(1) of Directive 2018/1972, and the principles of proportionality and non-discrimination.

(2) order Hungary to pay the costs.

Pleas in law and main arguments

The subject matter of the action is the decisions of the Hungarian media regulatory authorities and the legislation on which those decisions are based, by which Klubrádió, a commercial radio station operating in Hungary, was deprived of the possibility of broadcasting its programming on the analogue terrestrial FM frequency and thus of reaching large sections of the Hungarian population.

On 8 September 2020, the Media Council decided not to renew Klubrádió’s right of use of radio frequencies. The Council then launched a new tender procedure for granting the rights of use of the frequency previously used by Klubrádió. Klubrádió participated in the tender procedure, but the Media Council declared its application invalid on 10 March 2021. As a consequence of those two decisions of the Media Council, Klubrádió was forced to cease its broadcasting services on the FM frequency.

Furthermore, under the current Hungarian law, Klubrádió is also temporarily unable to broadcast its programming on the FM frequency.

The Commission considers that Hungary has infringed EU law by adopting that legislation and those measures.

([1]) Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services (OJ 2002 L 108, p. 21).

([2]) Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services (OJ 2002 L 249, p. 21).

([3]) Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (OJ 2002 L 108, p. 33).

([4]) Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (OJ 2018 L 321, p. 36).

Request for a preliminary ruling from the Bundesfinanzhof (Germany) lodged on 22 February 2023 — A GmbH & Co. KG v Hauptzollamt B

(Case C-104/23, A GmbH & Co. KG)

(2023/C 189/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Appellant on a point of law: A GmbH & Co. KG

Respondent on a point of law: Hauptzollamt B

Questions referred

1. Does Combined Nomenclature [1] heading 9406 necessarily require that a prefabricated building completely enclose a space on all sides?

2. If Question 1 is answered in the negative, does Combined Nomenclature heading 9406 require that the prefabricated building be large enough for a person of average height to be able to enter it, and does that require it to have at least one area that such a person can enter in an upright position, or is it sufficient for the person to be able to enter it in a bent-over position?

(1) Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), as amended by Commission Implementing Regulation (EU) No 1101/2014 of 16 October 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 2014 L 312, p. 1).

Appeal brought on 22 February 2023 by Patrick Vanhoudt against the judgment of the General Court (First Chamber) delivered on 14 December 2022 in Case T-490/21, Vanhoudt v EIB

(Case C-106/23 P)

(2023/C 189/20)

Language of the case: French

Parties

Appellant: Patrick Vanhoudt (represented by: L. Levi and A. Champetier, avocates)

Other party to the proceedings: European Investment Bank

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of 14 December 2022 in Case T-490/21;

— consequently, grant the appellant the form of order sought at first instance and, accordingly

  — annul the decision of 16 December 2020 to the extent that it dismisses the appellant's application for the position of Head of Office of the EIB Vice-President and the decision to appoint Mr L to the position concerned;

  — annul, where appropriate, the decision of 17 May 2021, communicated to the appellant on 18 May 2021, refusing the appellant's requests for administrative review of 18 December 2020 and 17 March 2021;

— order the EIB to compensate the appellant's non-material damage, which is assessed, *ex aequo et bono*, at EUR 4 000;

— order the EIB to pay all the costs;

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

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on the following grounds:

1. Breach of the Practice Directions and of the procedure — Breach of the court's duty to state reasons — Error in the legal qualification of the vacancy notice –Breach of the principle of non-discrimination.

2. Breach of the principle of legal certainty, transparency and non-discrimination — Breach of the court's duty to state reasons.

Request for a preliminary ruling from the Curtea de Apel Brașov (Romania) lodged on 22 February 2023 — Criminal proceedings against C.I., C.O., K.A., L.N., S.P.

(Case C-107/23 PPU, Lin)

(2023/C 189/21)

Language of the case: Romanian

Referring court

Curtea de Apel Brașov

Parties to the main proceedings

C.I., C.O., K.A., L.N., S.P.

Respondent

Romanian State

Questions referred

1. Should Article 2 TEU, the second paragraph of Article 19(1) TEU and Article 4(3) TEU, read in conjunction with Article 325(1) TFEU, Article 2(1) of the PFI Convention, [1] Articles 2 and 12 of the PFI Directive [2] and Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, [3] with reference to the principle of effective and dissuasive penalties in cases of serious fraud affecting the financial interests of the European Union, and applying Commission Decision 2006/928/EC, [4] with reference to the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, be interpreted as precluding a legal situation, such as that at issue in the main proceedings, in which the appellants seek, by means of an extraordinary appeal, to set aside a final judgment in criminal proceedings and request the application of the principle of the more lenient criminal law, which they allege was applicable in the course of the substantive proceedings and which would have entailed a shorter limitation period that would have expired before the case was finally concluded, but subsequently revealed by a decision of the national Constitutional Court which declared unconstitutional legislation on interrupting the limitation period for criminal liability (decision of 2022), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same Constitutional Court delivered four years earlier (decision of 2018) — by which time the case-law of the ordinary courts formed in application of the former decision had already established that the legislation in question was still in force, in the form understood as a result of the first decision of the Constitutional Court — with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to the first decision of the Constitutional Court was reduced by half and the criminal proceedings against the defendants in question were consequently discontinued?

2. Should Article 2 TEU, on the values of the rule of law and respect for human rights in a society in which justice prevails, and Article 4(3) TEU, on the principle of sincere cooperation between the European Union and the Member States, applying Commission Decision 2006/928/EC as regards the commitment to ensure the efficiency of the Romanian judicial system, with reference to the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, which enshrines the principle of the more lenient criminal law, be interpreted, in relation to the national judicial system as a whole, as precluding a legal situation, such as that at issue in the main proceedings, in which the convicted appellants seek, by means of an extraordinary appeal, to set aside a final judgment in criminal proceedings and request the application of the principle of the more lenient criminal law, which they allege was applicable in the course of the substantive proceedings and which would have entailed a shorter limitation period that would have expired before the case was finally concluded, but subsequently revealed by a decision of the national Constitutional Court which declared unconstitutional legislation on interrupting the limitation period for criminal liability (decision of 2022), on the ground that the legislature had failed to act to bring the legislation in question into line with another decision of the same Constitutional Court delivered four years earlier (decision of 2018) — by which time the case-law of the ordinary courts formed in application of the former decision had already established that the legislation in question was still in force, in the form understood as a result of the first decision of the Constitutional Court — with the practical consequence that the limitation period for all the offences in relation to which no final conviction had been handed down prior to the first decision of the Constitutional Court was reduced by half and the criminal proceedings against the defendants in question were consequently discontinued?

3. If so, and only if it is impossible to provide an interpretation in conformity with EU law, is the principle of the primacy of EU law to be interpreted as precluding national legislation or a national practice pursuant to which the ordinary national courts are bound by decisions of the national Constitutional Court and binding decisions of the national supreme court and may not, for that reason and at the risk of committing a disciplinary offence, of their own motion disapply the case-law resulting from those decisions, even if, in light of a judgment of the Court of Justice, they take the view that that case-law is contrary to Article 2 TEU, the second paragraph of Article 19(1) TEU and Article 4(3) TEU, read in conjunction with Article 325(1) TFEU, in application of Commission Decision 2006/928/EC, with reference to the last sentence of Article 49(1) of the Charter of Fundamental Rights of the European Union, as in the situation in the main proceedings?

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(1) Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests (OJ 1995 C 316, p. 49).
(2) Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29).
(3) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(4) Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Request for a preliminary ruling from the Landgericht Berlin (Germany) lodged on 23 February 2023 — GM, ON v PR

(Case C-109/23, Jemerak [1]**)**

(2023/C 189/22)

Language of the case: German

Referring court

Landgericht Berlin

Parties to the main proceedings

Complainants: GM, ON

Respondent: PR

Questions referred [2]

1. Does a German notary infringe the prohibition on providing, directly or indirectly, legal advisory services to a legal person established in Russia if he or she authenticates a contract for the sale of title to an apartment (*Wohnungseigentum*) entered into between that person as the seller and a national of a Member State of the European Union?

2. Does an interpreter act in contravention of the prohibition on providing, directly or indirectly, legal advisory services if, for the purposes of that authentication of the contract of sale, he or she accepts an assignment from that notary to translate the content of the authentication proceedings for the representative of the legal person established in Russia, who lacks sufficient proficiency in the German language?

3. Does the notary infringe the prohibition on providing, directly or indirectly, legal advisory services if he or she accepts and carries out instructions to perform notarial activities provided for by law for the purposes of execution of the contract of sale (for example, settlement of the purchase price payment via an escrow account held by the notary, requesting documents required for the cancellation of mortgages and other encumbrances burdening the object of sale, submission of the documents necessary to effect registration of the transfer of title to the body maintaining the *Grundbuch* ('the Land Register'))?

(1) The present case is referred to by a fictitious name, which does not correspond to the real name of any party to the proceedings.
(2) Interpretation of Article 5n(2) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (Russia-Sanctions-Regulation) (OJ 2014 L 229, p. 1), in the version applicable since 7 October 2022.

Request for a preliminary ruling from the Cour d'appel d'Aix-En-Provence (France) lodged on 1 March 2023 — Association Unedic délégation AGS de Marseille v V, W, X, Y, Z, liquidator of company K

(Case C-125/23, Unedic)

(2023/C 189/23)

Language of the case: French

Referring court

Cour d'appel d'Aix-En-Provence

Parties to the main proceedings

Appellant: Association Unedic délégation AGS de Marseille

Respondents: V, W, X, Y, Z, liquidator of company K

Questions referred

1. Can Directive 2008/94/EC (1) be interpreted as allowing the guarantee institution to be precluded from taking over the guarantee of severance pay on termination of employment relationships where an employee declares the termination of his or her contract of employment after insolvency proceedings have been initiated?

2. Is such an interpretation consistent with the wording and the purpose of that directive, and does it enable the results specified therein to be achieved?

3. Does such an interpretation, based on the person who terminated the contract of employment during the period of insolvency, entail a difference in treatment between employees?

4. If such a difference in treatment exists, is it objectively justified?

(1) Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer (OJ 2008 L 283, p. 36).

Request for a preliminary ruling from the Tribunale Ordinario di Venezia (Italy) lodged on 2 March 2023 — UD, QO, VU, LO, CA v Presidenza del Consiglio dei ministri, Ministero dell'Interno

(Case C-126/23, Burdene [1]**)**

(2023/C 189/24)

Language of the case: Italian

Referring court

Tribunale Ordinario di Venezia

Parties to the main proceedings

Applicants: UD, QO, VU, LO, CA

Defendants: Presidenza del Consiglio dei ministri, Ministero dell'Interno

Questions referred

In the circumstances referred to in paragraph A, concerning a lawsuit for damages brought by Italian citizens, permanently resident in Italy, against the State in its legislative capacity for failure to implement and/or incorrect and/or incomplete implementation of the obligations under Council Directive 2004/80/EC of 29 April 2004 'relating to compensation to crime victims' [2] and, in particular, the obligation, laid down in Article 12(2) thereof, for Member States to introduce by 1 July 2005 at the latest, as laid down in Article 18(1), a generalised scheme on compensation to victims of violent intentional crimes which guarantees fair and appropriate compensation to victims in cases where they are unable to obtain full compensation for the damage suffered from those directly responsible, and in relation to the situation of untimely (and/or incomplete) transposition into national law of Council Directive 2004/80/EC of 29 April 2004, the Court of Justice of the European Union is asked to rule on the following questions:

(a) Regarding the provision of Article 11, paragraph 2 *bis,* of Italian Law No 122/2016, which makes the payment of compensation to the parents and sister of a murder victim subject to the victim having no spouse and children, even in the presence of a final judgment quantifying in their favour the right to compensation for the damage suffered and making the perpetrator liable to pay such compensation:

— In the case of murder, does the fact that the payment of compensation laid down for the parents and sister of a victim of violent intentional crimes by Article 11, paragraph 2 *bis* of *the legge 7 luglio 2016, n. 122 (Disposizioni per l'adempimento degli obblighi derivanti dall'appartenenza dell'Italia all'Unione europea — Legge europea 2015-2016)* (Law No 122 of 7 July 2016, on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2015-2016), as subsequently amended by Article 6 of Law No 167 of 20 November 2017 and by Article 1, paragraphs 593-596, of Law No 145 of 30 December 2018, is subject to the victim having no children or spouse (as regards the parents) and no parents (as regards siblings), comply with the requirements laid down by Article 12(2) of Directive 2004/80, as well as with Articles 20 (equality), 21 (non-discrimination), 33(1) (protection of the family) and 47 (right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union and Article 1, Protocol 12 of the ECHR (non-discrimination)?

(b) Regarding the limitation on the payment of compensation:

— Can the condition attached to the payment of the compensation provided for in Article 11, paragraph 3, of Law No 122/2016, on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2015-2016, as amended by Article 6 of Law No 167 of 20 November 2017 and by Article 1, paragraphs 593-596, of Law No 145 of 30 December 2018) which states 'in any event within the limits of the availability of the Fund referred to in Article 14', without any provision requiring the Italian State to make specific provision for the compensation, even if determined on a statistical basis and in any event which is actually capable of providing compensation to those entitled within a reasonable period of time, be deemed to be 'fair and appropriate compensation to victims' pursuant to the provisions of Article 12(2) of Directive 2004/80?

[1] The name of the present case is a fictitious name. It does not correspond to the real name of any of the parties to the proceedings.
[2] OJ 2004 L 261, p. 15.

Request for a preliminary ruling from the Symvoulio tis Epikrateias (Greece) lodged on 7 March 2023 — Somateio 'Elliniko Symvoulio gia tous Prosfyges', Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio' v Ypourgos Exoterikon, Ypourgos Metanastefsis kai Asylou

(Case C-134/23, Elliniko Symvoulio gia tous Prosfyges)

(2023/C 189/25)

Language of the case: Greek

Referring court

Symvoulio tis Epikrateias

Parties to the main proceedings

Applicants: Somateio 'Elliniko Symvoulio gia tous Prosfyges',

Astiki Mi Kerdoskopiki Etaireia 'Ypostirixi Prosfygon sto Aigaio'

Defendants: Ypourgos Exoterikon,

Ypourgos Metanastefsis kai Asylou

Questions referred

(1) Must Article 38 of Directive 2013/32/EU, ([1]) read in conjunction with Article 18 of the Charter of Fundamental Rights of the European Union, be interpreted as precluding national (regulatory) legislation classifying a third country as generally safe for certain categories of applicants for international protection where, although that country has made a legal commitment to permit readmission to its territory of those categories of applicants for international protection, it is clear that it has refused readmission for a long period of time (in this case, more than 20 months) and the possibility of its changing its position in the near future does not appear to have been investigated?

Or

(2) must it be interpreted as meaning that readmission to the third country is not one of the cumulative conditions for the adoption of the national (regulatory) decision classifying a third country as generally safe for certain categories of applicants for international protection, but is one of the cumulative conditions for the adoption of an individual decision rejecting a particular application for international protection as inadmissible on the 'safe third country' ground?

Or

(3) must it be interpreted as meaning that, where the decision rejecting the application for international protection is based on the 'safe third country' ground, readmission to the 'safe third country' need be verified only at the time of enforcement of that decision?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (OJ 2013 L 180, p. 60).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 13 March 2023 — Ford Italia SpA v ZP, Stracciari SpA

(Case C-157/23, Ford Italia)

(2023/C 189/26)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Ford Italia SpA

Respondents: ZP, Stracciari SpA

Question referred

Is an interpretation that extends the producer's liability to the supplier, even where the latter has not physically placed its own name, trade mark or other distinguishing feature on the item, on the sole ground that the supplier has a name, trade mark or other distinguishing feature that is in whole or in part the same as that of the producer, consistent with Article 3[(1)] of Directive 85/374/EEC? (1) If it is not consistent with that provision, why is that the case?

(1) Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

Request for a preliminary ruling from the Satversmes tiesa (Latvia) lodged on 16 March 2023 — VL, ZS, Lireva Investments Limited, VI, FORTRESS FINANCE Inc. v Latvijas Republikas Saeima

(Case C-161/23, Lireva Investments and Others)

(2023/C 189/27)

Language of the case: Latvian

Referring court

Satversmes tiesa

Parties to the main proceedings

Appellants before the Satversmes tiesa: VL, ZS, Lireva Investments Limited, VI, FORTRESS FINANCE Inc.

Respondent: Latvijas Republikas Saeima

Questions referred

1. Does national legislation pursuant to which a national court rules on the confiscation of the proceeds of crime in separate proceedings relating to the illegally obtained assets, which are separated from the main criminal proceedings before it is established that a criminal offence has been committed and before anyone has been found guilty of that offence, and which also provides for confiscation based on materials taken from the criminal case file, fall within the scope of Directive 2014/42, (1) in particular Article 4 thereof, and of Framework Decision 2005/212, (2) in particular Article 2 thereof?

2. If the first question is answered in the affirmative, may national legislation concerning proof of the criminal source of assets in proceedings concerning illegally obtained assets, such as that established in the provisions at issue, be considered compatible with the right to a fair trial enshrined in Articles 47 and 48 of the Charter and in Article 8(1) of Directive 2014/42?

3. Is the principle of the primacy of European Union law to be interpreted as precluding the constitutional court of a Member State, which is seised of an action for a declaration of unconstitutionality brought against national legislation which has been held to be incompatible with European Union law, from ruling that the principle of legal certainty is applicable and that the legal effects of that legislation are to be maintained in relation to the period during which it was in force?

(1) Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39).

(2) Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49).

Request for a preliminary ruling from the Giudice di pace di Bologna (Italy) lodged on 14 March 2023 — Governo Italiano v UX

(Case C-163/23, Palognali [1]**)**

(2023/C 189/28)

Language of the case: Italian

Referring court

Giudice di pace di Bologna

Parties to the main proceedings

Opponent: Governo Italiano

Respondent: UX

Questions referred

1. Does the case-law of the highest ordinary and administrative courts cited below — more specifically, Order No 13973/2022 of 3 May 2022 of the Corte di Cassazione (Supreme Court of Cassation), which denies honorary fixed-term magistrates, such as the magistrate in the main proceedings, any rights linked to the status of worker with working conditions comparable to those of a permanent professional judge — commit a specific breach of EU law by preventing effective recourse to judicial protection of those rights before an independent national court if, and in so far as, the Court should find that that case-law of the ordinary court of last instance had infringed Article 31(2) of the Charter of Fundamental Rights of the European Union …, Article 7 of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time [2]…, clauses 2 and 4 of the framework agreement between ETUC, UNICE and CEEP on fixed-term work concluded on 18 March 1999, which is annexed to Council Directive 1999/70/EC of 28 June 1999 [3]…, as interpreted by the Court of Justice of the European Union in its judgments of 16 July 2020, *Governo della Repubblica italiana (Status of Italian Magistrates)* ('the judgment in *UX*'), C-658/18, EU:C:2020:572 … and of 7 April 2022, *Ministero della Giustizia and Others (Status of Italian Magistrates)* ('the judgment in *PG*'), C-236/20, EU:C:2022:263 …, and Article 47(1) and (2) of the Charter?

2. Do Article 31(2) of the Charter, Article 7 of Directive 2003/88/EC, clauses 2 and 4 of the framework agreement on fixed-term work transposed by Directive 1999/70/EC, as interpreted by the Court of Justice of the European Union in the judgment in *UX* and the judgment in *PG*, and Article 47(1) and (2) of the Charter preclude national legislation, such as Article 29(5) of decreto legislativo (Legislative Decree) No 116/2017, introduced by Article 1(629) of Law No 234/2021, in so far as the national rule provides for the automatic *ex lege* waiver of any claim arising from EU law, and, in the main proceedings, the waiver of the right to paid leave accruing to the magistrate who lodged the appeal, where the magistrate who lodged the appeal had submitted an application for the competitive procedure that would confirm him or her in his or her role indefinitely until he or she reached the age of 70, with an employment relationship with the Ministry of Justice on the salary for administrative officers with judicial functions, and had successfully completed the competitive procedure?

3. Does the choice that this referring court intends to make (once all the checks that have been entrusted, according to the case-law of the Court referred to above, to the national court regarding the comparability of working conditions between the magistrate who lodged the appeal and the equivalent permanent ordinary judge have been successfully carried out) regarding the appellant's right to damages for non-payment in respect of holiday leave — that choice being to apply, as a parameter for calculating the damages due, the salary paid to ordinary court judges at level HH03, while simultaneously complying with the different recruitment procedures for honorary magistrates and permanent professional judges, with only the latter (ordinary judges) having the right to progress financially and professionally through higher qualifications and not only by seniority through salary grades and steps — comply with the statements of the Court of Justice of the European Union in the judgment in *UX* and the judgment in *PG*?

4. Lastly, do Article 47 of the Charter and the conditions of judicial independence set out by the Court in paragraphs 45 to 49 of the judgment in *UX* preclude national legislation, such as Article 21 of Legislative Decree No 116/2017, which provides for the possible application of the measure of revoking the judicial appointment of the magistrate who has made the reference for a preliminary ruling, at the complete discretion of the Consiglio superiore della magistratura (Supreme Council of the Judiciary), without any graduation of disciplinary sanctions, even where that national magistrate seeks to apply case-law of the Court of Justice in the main proceedings, thereby running counter to the national legislation applicable to the case in the main proceedings and the case-law referred to above of the highest ordinary and administrative courts?

(1) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
(2) OJ 2003 L 299, p. 9.
(3) Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ 1999 L 175, p. 43).

Request for a preliminary ruling from the Szegedi Törvényszék (Hungary) lodged on 16 March 2023 — VOLÁNBUSZ Zrt. v Bács-Kiskun Vármegyei Kormányhivatal

(Case C-164/23, VOLÁNBUSZ)

(2023/C 189/29)

Language of the case: Hungarian

Referring court

Szegedi Törvényszék

Parties to the main proceedings

Applicant: VOLÁNBUSZ Zrt.

Defendant: Bács-Kiskun Vármegyei Kormányhivatal

Questions referred

1. Can the concept of ‘employer’s operational centre where the driver is normally based’, used in Article 9(3) of [Regulation No 561/2006], (1) be interpreted as meaning the place to which the driver is actually attached, in other words, the road passenger transport undertaking’s facilities or parking area, or another geographical point defined as the starting location of the route, from which the driver usually carries out his or her service and to which he or she returns at the end of that service, in the normal exercise of his or her functions and without complying with specific instructions from his or her employer?

2. For the purposes of assessing whether a particular place constitutes an ‘employer’s operational centre where the driver is normally based’, within the meaning of Article 9(3) of [Regulation No 561/2006], does it matter whether or not the location has adequate facilities (for example, hygiene and welfare facilities, rest area)?

3. For the purposes of assessing whether a particular place constitutes an ‘employer’s operational centre where the driver is normally based’, for the purposes of Article 9(3) of [Regulation No 561/2006], does it matter whether the location of places to which drivers are actually attached is favourable to workers (drivers) in that they are, in any event, situated closer to their homes than the establishments and branches of the undertaking recorded in the Commercial Register, with the result that the drivers’ required travelling time is shorter than it would be if they were to start and finish work in those establishments or branches?

4. If the term 'employer's operational centre where the driver is normally based', used in Article 9(3) of [Regulation No 561/2006], cannot be defined as the place to which the driver is actually attached, in other words, the road passenger transport undertaking's facilities or parking area, or another geographical point defined as the starting location of the route, from which the driver usually carries out his or her service and to which he or she returns at the end of that service, in the normal exercise of his or her functions and without complying with specific instructions from his or her employer, should the definition of that term in [Regulation No 561/2006] be treated as a measure regarding working conditions, in respect of which the two sides of industry are able to lay down, by collective bargaining or otherwise, provisions more favourable to workers, in the light of recital 5 of the regulation?

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(1) Regulation (EC) No 561/2006 of the European Parliament and of the Council of 15 March 2006 on the harmonisation of certain social legislation relating to road transport and amending Council Regulations (EEC) No 3821/85 and (EC) No 2135/98 and repealing Council Regulation (EEC) No 3820/85 (OJ 2006 L 102, p. 1).

Request for a preliminary ruling from the Svea hovrätt (Mark- och miljööverdomstolen) (Sweden) lodged on 17 March 2023 — Naturvårdsverket v Nouryon Functional Chemicals AB

(Case C-166/23, Nouryon Functional Chemicals)

(2023/C 189/30)

Language of the case: Swedish

Referring court

Svea hovrätt (Mark- och miljööverdomstolen)

Parties to the main proceedings

Appellant: Naturvårdsverket

Respondent: Nouryon Functional Chemicals AB

Questions referred

1. Is the exemption for units for the incineration of hazardous waste in clause 5 of Annex I to the Emission Allowance Trading Directive – [1] that all units in which fuels are combusted are to be included in the greenhouse gas emissions permit, other than units for the incineration of hazardous waste — applicable to all units which incinerate hazardous waste, or must there be some qualifying factor in order for the exemption to be applied? If such a factor is necessary, is the purpose of the unit thus to be decisive for application of the exemption, or can other factors also be relevant?

2. If the unit's purpose is decisive to the assessment, is the exemption still to be applied to a unit which incinerates hazardous waste but which has a main purpose other than that incineration?

3. If the exemption applies only to a unit which has as its main purpose the incineration of hazardous waste, which criteria are to be used in the assessment of the purpose?

4. If, in an assessment, it is decisive whether the unit is to be regarded as an integral part of an activity in an installation for which a permit is required under the directive — for example, as set out in section 3.3.3 of the Commission Guidance — which requirements are thus to be set in order for the unit to be regarded as an integral part thereof? Can it be required, for example, that the production must be impossible or not allowed without the unit (see Commission Guidance, page 14, footnote 14), or can it be sufficient for the unit to be technically linked to the installation and accept hazardous waste only from that installation?

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(1) 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 (OJ 2003 L 275, p. 32).

Request for a preliminary ruling from the Landgericht Frankfurt am Main (Germany) lodged on 20 March 2023 — trendtours Touristik GmbH v SH

(Case C-170/23, trendtours Touristik)

(2023/C 189/31)

Language of the case: German

Referring court

Landgericht Frankfurt am Main

Parties to the main proceedings

Defendant and appellant: trendtours Touristik GmbH

Applicant and respondent: SH

Questions referred

1. Is the first sentence of Article 12(2) of Directive (EU) 2015/2302 [1] of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2001/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC ('the Package Travel Directive') to be interpreted as meaning that the organiser's entitlement to compensation for termination does not lapse if, at the time of the trip, there are no longer any significant adverse effects resulting from unavoidable and extraordinary circumstances, even if such circumstances had reportedly existed at an earlier point in time and those circumstances would have resulted in significant adverse effects, or does the answer to the question as to whether or not unavoidable and extraordinary circumstances are significantly affecting the trip depend solely on a decision made on the basis of a prediction at the time of the declaration of termination?
2. If the determinative factor is a decision made on the basis of a prediction, up to what point in time must the traveller wait until he or she is entitled to issue his or her declaration of termination without being required to pay compensation for termination, even if the significant adverse effects resulting from unavoidable and extraordinary circumstances subsequently cease?

[1] Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC (OJ 2015 L 326, p. 1).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 28 March 2023 — Autorità di regolazione dei trasporti v Lufthansa Linee Aeree Germaniche and Others

(Case C-204/23, Lufthansa Linee Aeree Germaniche and Others)

(2023/C 189/32)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Autorità di regolazione dei trasporti

Respondents: Lufthansa Linee Aeree Germaniche, Austrian Airlines AG, Brussels Airlines SA/NV, Swiss International Air Lines Ltd, Lufthansa Cargo AG

Questions referred

1. Must Article 11(5) of Directive 2009/12/EC [1] — a legislative act relating to the airport sector — be interpreted as meaning that the funding of the Authority must be carried out only by means of levying airport charges, or may it not also be carried out by means of other forms of funding such as levying a financial contribution (the present Chamber finds that collecting the sums intended to fund the Authority by means of levying airport charges is merely an option for Member States)?

2. Must the charges or the financial contribution which may be levied for the funding of the supervisory authority pursuant to Article 11(5) of Directive 2009/12/EC relate only to specific services and costs — which, in any event, are not referred to in the Directive — or is their correlation to the Authority's operating costs as resulting from the financial statements submitted to and audited by the public authorities not sufficient?

3. Must Article 11(5) of Directive 2009/12/EC be interpreted as meaning that charges may be levied only on persons resident or incorporated under the law of the State which established the Authority, and can this also apply in the case of financial contributions levied for the operation of the Authority?

(1) Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges (OJ 2009 L 70, p. 11).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 30 March 2023 — AX

(Case C-208/23, Martiesta (1)**)**

(2023/C 189/33)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: AX

Questions referred

1. Must Article 1(2) and (3) of Framework Decision 2002/584/JHA on the European arrest warrant (2) be interpreted as meaning that the executing judicial authority must refuse or, in any event, defer the surrender of a pregnant woman or a mother who has minor children living with her?

2. If the answer to the first question is in the affirmative, are Article 1(2) and (3) and Articles 3 and 4 of Framework Decision 2002/584/JHA compatible with Articles 3, 7, 4, 24 and 35 of the Charter of Fundamental Rights of the European Union, taking account also the case-law of the European Court of Human Rights and the constitutional traditions common to the Member States, in so far as they require the surrender of the pregnant woman or the mother, thus severing ties with the minor children living with her without considering the '*best interest of the child*'?

(1) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.
(2) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

Action brought on 31 March 2023 — European Commission v Portuguese Republic

(Case C-210/23)

(2023/C 189/34)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Caro de Sousa and M. Noll-Ehlers, acting as Agents)

Defendant: Portuguese Republic

Form of order sought

— Declare that, by failing to transpose correctly Articles 2(4), 4(5)(b), 6(2)(d), 8a(4) and 4(3), in conjunction with Annex III(2)(b) and (c)(iv), of Directive 2011/92/EU [of the European Parliament and of the Council of 13 December 2011] on the assessment of the effects of certain public and private projects on the environment, [1] as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014, [2] the Portuguese Republic has failed to fulfil its obligations under Directive 2011/92/EU;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The Commission considers that the Portuguese Republic has not correctly transposed into Portuguese law several articles of Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011, on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU of the European Parliament and of the Council of 16 April 2014 (in its amended and consolidated version, 'the Directive'). The Commission sent a letter of formal notice to the Portuguese Republic on 11 October 2019. A reasoned opinion was then sent to the Portuguese Republic on 12 November 2021. The Commission therefore brings the present action on the basis of the following pleas:

— By not limiting the exemption provided for in Article 2(4) of the Directive with regard to environmental impact assessment ('EIA') procedures to cases where the application of those provisions would undermine the purpose of the project, the Portuguese Republic infringed Article 2(4) of the Directive.

— By providing that certain projects are not subject to an EIA, where the competent authority does not issue an opinion on the submission of those projects to an EIA within the legal time period, the Portuguese Republic infringed Article 4(5) of the Directive.

— By failing to provide that the public be informed, by appropriate means, as soon as reasonably practicable, of the nature of possible decisions or, as the case may be, of the draft EIA decision, the Portuguese Republic infringed Article 6(2) of the Directive.

— By failing to provide that the types of parameters to be monitored and the duration of the monitoring, identified in a decision approving a project, are proportionate to the nature, location and size of the project and the significance of its effects on the environment, the Portuguese Republic infringed Article 8a(4) of the Directive.

— By not including the 'availability' of natural resources among the relevant criteria for determining whether a project should be subject to an EIA, the Portuguese Republic infringed Article 4(3) in conjunction with Annex III, point 2(b), of the Directive.

— By failing to refer to 'Union legislation' or to areas 'in which there has already been a failure to meet the environmental quality standards' when listing the relevant elements for determining the areas in which the absorption capacity of the natural environment should be assessed as a relevant criterion for determining whether a project should be subject to an EIA, the Portuguese Republic infringed Article 4(3) in conjunction with Annex III, point 2(c)(vi), of the Directive.

(1) OJ 2012 L 26, p. 1.
(2) OJ 2014 L 124, p. 1.

Appeal brought on 17 April 2023 by European Association of Non-Integrated Metal Importers & distributors (Euranimi) against the order of the General Court (Third Chamber) delivered on 07 February 2023 in Case T-81/22, Euranimi v Commission

(Case C-252/23 P)

(2023/C 189/35)

Language of the case: English

Parties

Appellant: European Association of Non-Integrated Metal Importers & distributors (Euranimi) (represented by: M. Campa, D. Rovetta, V. Villante, avvocati, P. Gjørtler, advokat,)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— declare admissible the present appeal;

— set aside the order under appeal and declare the action brought by Euranimi admissible;

— send back the case to the General Court for examining the substance of Euranimi's action;

— order the European Commission to bear the legal cost of the present appeal and of the procedure at first instance.

Pleas in law and main arguments

In support of the appeal, the appellant relies on three main pleas in law:

First plea: error in law in interpreting the Article 263 (4) TFEU and in particular the requisite of 'direct and individual concern' — wrong qualification of facts.

Second plea: error in law in interpreting the final limb of Article 263 (4) TFEU and the requisite and notion of regulatory act which does not entail implementing measures — wrong qualification of facts and distortion of evidence.

Third plea: wrong qualification of facts and distortion of evidence.

GENERAL COURT

Judgment of the General Court of 19 April 2023 — PP and Others v Parliament

(Case T-39/21) [1]

(Civil service — Officials — Health crisis linked to the COVID-19 pandemic — Decision authorising part-time work in order to take care of relatives outside the place of employment — No possibility of teleworking full time outside the place of employment — Irregularity in the pre-litigation procedure — Decision granting a request to work part time — No legal interest in bringing proceedings — Inadmissibility — Remuneration — Suspension of the expatriation allowance — Articles 62 and 69 of the Staff Regulations — Infringement of Article 4 of Annex VII to the Staff Regulations)

(2023/C 189/36)

Language of the case: French

Parties

Applicants: PP, PQ, PR, PS, PT (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament (represented by: S. Seyr, D. Boytha and M. Windisch, acting as Agents)

Re:

By their action under Article 270 TFEU, the applicants, PP, PS, PQ, PR and PT, seek, in essence, first, annulment of the decisions of the European Parliament of 14 April 2020 authorising PQ and PS to work part time outside their place of employment due to the COVID-19 pandemic and of 18 May 2020 authorising PP to work part time outside his place of employment due to the COVID-19 pandemic (together, 'the decisions authorising part-time work'), the decisions of 7, 15, 16 April and 19 May 2020 suspending payment of the applicants' expatriation allowance during the period they were working outside their place of employment (together, 'the decisions suspending the expatriation allowance') and the decisions of 6 May 2020 to recover the sums overpaid to PR and PT (together, 'the decisions to recover overpayments') and, second, compensation for the damage which they claim to have suffered as a result of those decisions.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Parliament of 19 May 2020 suspending PP's expatriation allowance;

2. Annuls the decision of the European Parliament of 7 April 2020 suspending PR's expatriation allowance;

3. Annuls the decision of the European Parliament of 15 April 2020 suspending PQ's expatriation allowance;

4. Annuls the decision of the European Parliament of 15 April 2020 suspending PS's expatriation allowance;

5. Annuls the decision of the European Parliament of 16 April 2020 suspending PT's expatriation allowance;

6. Dismisses the remainder of the action;

7. Orders PP, PS, PR, PQ and PT to bear half of their own costs;

8. Orders the Parliament, in addition to bearing its own costs, to pay half of the costs of PP, PS, PR, PQ and PT.

[1] OJ C 110, 29.3.2021.

Judgment of the General Court of 19 April 2023 — Gerhard Grund Gerüste v EUIPO — Josef-Grund-Gerüstbau (Josef Grund Gerüstbau)

(Case T-749/21) ([1])

(EU trade mark — Invalidity proceedings — EU word mark Josef Grund Gerüstbau — Earlier national figurative mark grund — Relative ground for invalidity — No likelihood of confusion — No similarity between the signs — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2023/C 189/37)

Language of the case: German

Parties

Applicant: Gerhard Grund Gerüste e. K. (Kamp-Lintfort, Germany) (represented by: P. Lee, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Josef-Grund-Gerüstbau GmbH (Erfurt, Germany) (represented by: T. Staupendahl, lawyer)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 22 September 2021 (Case R 1925/2020-1).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Gerhard Grund Gerüste e. K. to pay the costs.

([1]) OJ C 37, 24.1.2022.

Judgment of the General Court of 19 April 2023 — OD v Eurojust

(Case T-61/22) ([1])

(Civil service — Members of the temporary staff — Temporary reassignment in the interests of the service — Article 7 of the Staff Regulations — Request for assistance — Article 24 of the Staff Regulations — Provisional distancing measure — Concept of 'act adversely affecting an official' — Right to be heard — Liability)

(2023/C 189/38)

Language of the case: French

Parties

Applicant: OD (represented by: N. de Montigny, lawyer)

Defendant: European Union Agency for Criminal Justice Cooperation (represented by: A. Terstegen-Verhaag and M. Castro Granja, acting as Agents, and by D. Waelbroeck and A. Duron, lawyers)

Re:

By her action under Article 270 TFEU, the applicant seeks, first, annulment of the decision of 17 June 2021 by which the European Union Agency for Criminal Justice Cooperation (Eurojust) decided to reassign her temporarily to a [*confidential*] post, as well as, in so far as necessary, the decision of 21 October 2021 by which Eurojust rejected her complaint of 22 June 2021, and, secondly, compensation for the damage which she claims to have suffered following those decisions.

Operative part of the judgment

The Court:

1. Annuls the decision of the European Union Agency for Criminal Justice Cooperation (Eurojust) of 17 June 2021 concerning the temporary reassignment of OD to a [confidential] post;

2. Dismisses the action as to the remainder;

3. Orders Eurojust to bear its own costs and to pay those incurred by OD.

([1]) OJ C 119, 14.3.2022.

Judgment of the General Court of 19 April 2023 — Siemens v Parliament

(Case T-74/22) ([1])

(Public procurement — Public works contracts — Tendering procedure — Renewal of the fire safety system in the Parliament buildings in Strasbourg — Rejection of a tenderer's tender and award of the contract to other tenderers — Non-contractual liability)

(2023/C 189/39)

Language of the case: French

Parties

Applicant: Siemens SAS (Saint-Denis, France) (represented by: E. Berkani and M. Blanchard, lawyers)

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

Re:

By its action, the applicant seeks, principally, on the basis of Article 263 TFEU, annulment of the decisions of the European Parliament of 8 December 2021 not to accept the tenders submitted by the consortium composed of the applicant and Eiffage Energie Systèmes — Alsace Franche-Comté in the context of Lots Nos 1 and 2 of call for tenders 06A 70/2021/M004, relating to the renewal of the fire safety system in the Parliament buildings in Strasbourg (France), and to award the contract to other tenderers, and, in the alternative, on the basis of Article 268 TFEU, compensation for the loss which it allegedly suffered as a result of the adoption of the contested decisions.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Siemens SAS to pay the costs.

([1]) OJ C 138, 28.3.2022.

Judgment of the General Court of 19 April 2023 — OQ v Commission

(Case T-162/22) ([1])

(Civil Service — Officials — Disciplinary proceedings — Disciplinary penalty — Removal from post without reduction of entitlement to a pension — Article 10 of Annex IX to the Staff Regulations — Proportionality — Obligation to state reasons)

(2023/C 189/40)

Language of the case: French

Parties

Applicant: OQ (represented by: N. Maes and J.-N. Louis, lawyers)

Defendant: European Commission (represented by: S. Bohr and L. Vernier, acting as Agents)

Re:

By his action under Article 270 TFEU, the applicant seeks annulment, first, of the European Commission's decision of 19 May 2021 by which it imposed on him the disciplinary penalty of removal from post without reduction of entitlement to a pension and, secondly, of the decision of 15 December 2021 by which the Commission rejected his complaint.

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders OQ to bear his own costs and to pay those incurred by the European Commission.

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[1] OJ C 198, 16.5.2022.

Judgment of the General Court of 19 April 2023 — Zitro International v EUIPO — e-gaming (Smiley wearing a top hat)

(Case T-491/22) [1]

(EU trade mark — Opposition proceedings — Application for an EU figurative mark representing a smiley wearing a top hat — Earlier EU figurative mark representing a fantasy figure — Relative ground for refusal — Article 8(1)(b) of Regulation (EU) 2017/1001)

(2023/C 189/41)

Language of the case: English

Parties

Applicant: Zitro International Sàrl (Luxembourg, Luxembourg) (represented by: A. Canela Giménez, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Stoyanova-Valchanova and D. Gája, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO: e-gaming s. r. o. (Prague, Czech Republic)

Re:

By its action brought under Article 263 TFEU, the applicant seeks annulment of the decision of the Fourth Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 30 May 2022 (Case R 2005/2021-4).

Operative part of the judgment

The Court:

1. Dismisses the action;

2. Orders Zitro International Sàrl to bear its own costs;

3. Orders the European Union Intellectual Property Office (EUIPO) to bear its own costs.

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[1] OJ C 380, 3.10.2022.

Order of the General Court of 31 March 2023 — Eggers & Franke v EUIPO — E. & J. Gallo Winery (EF)

(Case T-183/22) ([1])

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

(2023/C 189/42)

Language of the case: English

Parties

Applicant: Eggers & Franke Holding GmbH (Bremen, Germany) (represented by: A. Ebert-Weidenfeller and H. Förster, lawyers)

Defendant: European Union Intellectual Property Office (represented by: E. Nicolás Gómez and T. Klee, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: E. & J. Gallo Winery (Modesto, California, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of EUIPO of 4 February 2022 (Case R 729/2021-5), relating to opposition proceedings between E. & J. Gallo Winery and Eggers & Franke Holding GmbH.

Operative part of the order

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

2. Eggers & Franke Holding GmbH and E. & J. Gallo Winery shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

([1]) OJ C 207, 23.5.2022.

Order of the General Court of 31 March 2023 — Eggers & Franke v EUIPO — E. & J. Gallo Winery (E & F)

(Case T-184/22) ([1])

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

(2023/C 189/43)

Language of the case: English

Parties

Applicant: Eggers & Franke Holding GmbH (Bremen, Germany) (represented by: A. Ebert-Weidenfeller and H. Förster, lawyers)

Defendant: European Union Intellectual Property Office (represented by: E. Nicolás Gómez and T. Klee, acting as Agents)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: E. & J. Gallo Winery (Modesto, California, United States) (represented by: V. von Bomhard and J. Fuhrmann, lawyers)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment of the decision of the Fifth Board of Appeal of EUIPO of 15 February 2022 (Case R 730/2021-5), relating to opposition proceedings between E. & J. Gallo Winery and Eggers & Franke Holding GmbH.

Operative part of the order

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

2. Eggers & Franke Holding GmbH and E. & J. Gallo Winery shall bear their own costs and shall each pay half of those incurred by the European Union Intellectual Property Office (EUIPO).

(1) OJ C 207, 23.5.2022.

Order of the General Court of 31 March 2023 — Mocom Compounds v EUIPO — Centemia Conseils (Near-to-Prime)

(Case T-472/22) (1)

(EU trade mark — Invalidity proceedings — EU word mark Near-to-Prime — Absolute ground for invalidity — Descriptive character — Article 7(1)(c) of Regulation (EC) No 207/2009 (now Article 7(1)(c) of Regulation (EU) 2017/1001) — Action manifestly lacking any foundation in law)

(2023/C 189/44)

Language of the case: German

Parties

Applicant: Mocom Compounds GmbH & Co. KG (Hamburg, Germany) (represented by: J. Bornholdt, lawyer)

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

Other party to the proceedings before the Board of Appeal of EUIPO: Centemia Conseils (Angevillers, France)

Re:

By its action under Article 263 TFEU, the applicant seeks the annulment and alteration of the decision of the First Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 24 May 2022 (Case R 2178/2021-1).

Operative part of the order

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

2. Each party shall bear its own costs.

(1) OJ C 359, 19.9.2022.

Action brought on 27 February 2023 — Medel and Others v Commission

(Case T-116/23)

(2023/C 189/45)

Language of the case: English

Parties

Applicants: Magistrats européens pour la démocratie et les libertés (Medel) (Strasbourg, France), International Association of Judges (Rome, Italy), Association of European Administrative Judges (Trier, Germany), Stichting Rechters voor Rechters (The Hague, Netherlands) (represented by: C. Zatschler, SC, E. Egan McGrath, Barrister-at-Law, A. Bateman and M. Delargy, Solicitors)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— annul the Financing Agreement between the Commission and the Republic of Poland concluded in accordance with Article 23(1) of Regulation 2021/241 and dated 24 August 2022;

— annul the Loan Agreement between the Commission and the Republic of Poland concluded in accordance with Article 15(2) of Regulation 2021/241 and dated 24 August 2022; and

— order the Commission to bear its own costs and pay those of the applicants.

Pleas in law and main arguments

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

1. First plea in law, alleging that the Council implementing decision of 17 June 2022 on the approval of the assessment of the recovery and resilience plan for Poland ('the Council implementing decision'), on the basis of which the above-mentioned Financing and Loan Agreements ('the contested Financing and Loan Agreements') were entered into by the Commission, is invalid because the Council disregarded the case law of the Court of Justice held in judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court of Poland)* (C-585/18, C-624/18 and C-625/18, EU:C:2019:982), judgment of 15 July 2021, *Commission* v *Poland* (Disciplinary regime applicable to judges) (C-791/19, EU:C:2021:596), order of 8 April 2020, *Commission* v *Poland* (C-791/19 R, EU:C:2020:277) and order of the Vice-President of the Court of 14 July 2021, *Commission* v *Poland* (C-204/21 R, EU:C:2021:593), and infringed Articles 2 and 13(2) TEU.

   The applicant further submits under this plea that the Council exceeded its competence to the extent that it purported to determine how Poland should comply with the case law of the Court of Justice concerning the Disciplinary Chamber of the Supreme Court of Poland ('the Disciplinary Chamber').

2. Second plea in law, alleging that the Council implementing decision is invalid because the Council infringed Articles 2 and 19(1) TEU and Article 47 of the Charter of Fundamental Rights and Freedoms ('the Charter'), as authoritatively interpreted by the Court of Justice.

   In support of this plea, the applicants argue that the milestones, on which the Council implementing decision is founded, infringe Articles 2 and 19(1) TEU and Article 47 of the Charter, in that they:

   — accord legal effects to the decisions of the Disciplinary Chamber rather than considering them null and void,

   — impose additional procedural burdens, uncertainty and delays on judges affected by unlawful decisions of the Disciplinary Chamber by requiring the judges in question to commence a new set of proceedings before a newly constituted chamber in the Supreme Court to clear their name; and

   — do not even foresee the judges in question being at least temporarily reinstated pending the outcome of any review proceedings.

3. Third plea in law, alleging that the Council implementing decision is invalid because milestones F1G, F2G and F3G provided for in the Council implementing decision are insufficient to re-establish effective judicial protection in Poland, which is a prerequisite for the functioning of an internal control system. The applicants contend that the Council implementing decision accordingly infringes Articles 20(5)(e) and 22 of Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility (OJ 2021 L 57, p. 17) and Article 325 TFEU, which require effective and efficient internal controls.

4. Fourth plea in law, alleging that the Council implementing decision is invalid because the Council erred in law and/or committed manifest errors of assessment in applying Article 19(3) of Regulation 2021/241 in approving the milestones to be 'adequate arrangements' for the prevention, detection and correction of corruption in Poland.

5. Fifth plea in law, alleging that the Council implementing decision is invalid because the Council failed to adequately state reasons for it, thereby infringing Article 296 TFEU, Article 41 of the Charter, and the principles of EU law.

6. Sixth plea in law, alleging that the contested Financing and Loan Agreements entered into by the Commission exceed the powers conferred on the Commission under the Council implementing decision and the Regulation (EU) 2021/241, and thus breach EU law in that Articles 6(5) and 18(1) of the Financing Agreement and Articles 7(5) and 28(1) of the Loan Agreement allow for the possibility of funding being disbursed even without the rule of law milestones F1G, F2G and F3G, provided for in the Council implementing decision, having been met.

Action brought on 13 March 2023 — Swenters v Commission

(Case T-142/23)

(2023/C 189/46)

Language of the case: Dutch

Parties

Applicant: Ivo Swenters (Hasselt, Belgium) (represented by: J. Coninx, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

— declare the application admissible and well founded in form and content;

— accordingly, annul the contested decision;

— order the Commission to pay the costs.

Pleas in law and main arguments

In support of its action against the decision of the Commission of 13 January 2023 rejecting its complaint concerning infringements of Article 101 TFEU and Article 102 TFEU allegedly committed by SCR-Sibelco NV, Cimenteries C.B. R. Cementbedrijven NV, Grintbedrijf SBS NV, Kiezelgroeve Varenberg NV, Dragages Graviers et Travaux (Dragratra) NV, Sibelco Nederland BV, Van Nieuwpoort Groep BV, Heidelbergcement AG and Hülskens Holding GmbH & Co (Case AT.40683 — Belgian Sand), the applicant relies on two pleas in law.

1. First plea in law, alleging that the Commission breached its obligation to investigate and to state reasons

   The Commission breached its obligation to investigate carefully the circumstances and agreements cited by the applicant, despite the presence of hardcore restrictions of competition. The arguments raised by the applicant were rejected without any investigation and the Commission limits itself in the contested decision to summary and superficial determinations.

2. Second plea in law, alleging that the Commission incorrectly assessed the interests of the Union.

   The Commission wrongly took the position that the infringements raised by the applicant appear to be limited to one Member State, thereby misunderstanding the international scope of the facts. The Commission also took no account of the duration of the infringements and wrongly drew the conclusion that the national courts and authorities were well placed to evaluate the anti-competitive practices cited by the applicant.

Action brought on 8 April 2023 — Innovation & Entrepreneurship Business School v EUIPO — Thinksales (Sales School Powered by IEBS)

(Case T-182/23)

(2023/C 189/47)

Language in which the application was lodged: Spanish

Parties

Applicant: Innovation & Entrepreneurship Business School, SL (Barcelona, Spain) (represented by: L. Torrents Homs, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Thinksales, SL (Madrid, Spain)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: Application for the EU figurative mark Sales School Powered by IEBS — Application for registration No 18 274 899

Proceedings before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 8 February 2023 in Case R 834/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it relates to the goods and services covered by the trade mark at issue in respect of which registration was refused;

— grant full registration of the trade mark at issue;

— order EUIPO to pay the costs of the present proceedings and order Thinksales to pay the costs of the proceedings before the Opposition Division and the Board of Appeal of EUIPO.

Plea in law

Infringement of Article 8(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

Action brought on 11 April 2023 — Insomnia v EUIPO — Black Insomnia Coffee (BLACK INSOMNIA)

(Case T-185/23)

(2023/C 189/48)

Language in which the application was lodged: English

Parties

Applicant: Insomnia Ltd (Dublin, Ireland) (represented by: L. Cassidy, A. Reynolds and P. Smyth, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Black Insomnia Coffee Co. Ltd (Winchester, United Kingdom)

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 BLACK INSOMNIA — Application for registration No 18 128 257

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 3 February 2023 in Cases R 679/2022-1 and R 692/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismissed the appeal in Case R 679/2022-1 and refuse the mark in respect of all the contested goods in Class 25;

— make an order to pay the applicant's costs (under Articles 133 and 134(1) of the Rules of Procedure of the General Court).

Pleas in law

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

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 11 April 2023 — Insomnia v EUIPO — Black Insomnia Coffee (BLACK INSOMNIA COFFEE COMPANY)

(Case T-186/23)

(2023/C 189/49)

Language in which the application was lodged: English

Parties

Applicant: Insomnia Ltd (Dublin, Ireland) (represented by: L. Cassidy, A. Reynolds and P. Smyth, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Black Insomnia Coffee Co. Ltd (Winchester, United Kingdom)

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 figurative mark BLACK INSOMNIA COFFEE COMPANY — Application for registration No 18 128 261

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 3 February 2023 in Cases R 671/2022-1 and R 678/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it dismissed the appeal in Case R 678/2022-1 and refuse the mark in respect of all the contested goods in Class 25;

— make an order to pay the applicant's costs (under Articles 133 and 134(1) of the Rules of Procedure of the General Court).

Pleas in law

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

— Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 April 2023 — IU Internationale Hochschule v EUIPO (IU International University of Applied Science)

(Case T-188/23)

(2023/C 189/50)

Language of the case: German

Parties

Applicant: IU Internationale Hochschule GmbH (Erfurt, Germany) (represented by: A. Heise, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the word mark IU International University of Applied Sciences — Application No 1 628 092

Contested decision: Decision of the First Board of Appeal of EUIPO of 14 February 2023 in Case R 1951/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Infringement of Article 72(2) in conjunction with Article 7(1)(c) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

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

— Infringement of Article 72(2) in conjunction with Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 April 2023 — The Mochi Ice Cream Company v EUIPO (my mochi)

(Case T-189/23)

(2023/C 189/51)

Language of the case: English

Parties

Applicant: The Mochi Ice Cream Company LLC (Vernon, California, United States) (represented by: A. Zalewska-Orabona, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: International registration designating the European Union in respect of the figurative mark my mochi — Application for registration No 1 598 762

Contested decision: Decision of the Second Board of Appeal of EUIPO of 30 January 2023 in Case R 1684/2022-2

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 7(1)(b) in conjunction with Article 7(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 14 April 2023 — Peikko Group v EUIPO — Anstar (Shape of metal beams for construction)

(Case T-192/23)

(2023/C 189/52)

Language in which the application was lodged: English

Parties

Applicant: Peikko Group Oy (Lahti, Finland) (represented by: M. Müller and A. Fottner, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Anstar Oy (Villähde, Finland)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union tridimensional mark (Shape of metal beams for construction) — European Union trade mark No 18 139 145

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 7 February 2023 in Case R 2180/2021-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the request for declaration of invalidity of the trade mark at issue;

— order the defendant and the other party to the proceedings before the Board of Appeal to bear the applicant's costs n the present procedure and in the procedure before the Board of Appeal.

Plea in law

— Infringement of Article 59(1)(a) in conjunction with Article 7(1)(e)(ii) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 13 April 2023 — MegaFon v Council

(Case T-193/23)

(2023/C 189/53)

Language of the case: French

Parties

Applicant: MegaFon OAO (Moscow, Russia) (represented by: J. Grand d'Esnon, lawyer)

Defendant: Council of the European Union

Forms of order sought

The applicant claims that the General Court should:

— annul Council Regulation (EU) No 2023/427 ([1]) of 25 February 2023 as regards MegaFon;

— annul Council Decision 2023/434/CFSP ([2]) of 25 February 2023 as regards MegaFon;

— consequently, annul:

  — Annex IV of Regulation (EU) No 833/2014 of 31 July 2014 as regards MegaFon;

  — Annex IV of Decision 2014/512/CFSP of 31 July 2014 as regards MegaFon;

— order the Council of the European Union to pay the costs pursuant to Article 140(b) of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the rights of the defence and the right to effective judicial protection. The applicant submits that the Council did not communicate to it in advance the decision listing MegaFon in Annex IV to Regulation (EU) No 833/2014 and Decision 2014/512/CFSP ('the measures of 31 July 2014') and did not give the applicant the opportunity to submit observations, even though the Council was, in the applicant's view, obliged to do so by virtue of the principles relating to respect for the rights of the defence.

2. Second plea in law, alleging failure to state reasons for the decision to include MegaFon in Annex IV to the measures of 31 July 2014. The applicant submits that the Council did not communicate to it the reasons justifying the inclusion of the applicant in Annex IV to the measures of 31 July 2014.

3. Third plea in law, alleging that the sanctions imposed on the applicant were unlawful, in that they were the result of an error of assessment, on the ground that the reasons for those sanctions were incorrect and, in any event, not established.

4. Fourth plea in law, alleging infringement of the principle of proportionality by the measures of 25 February 2023.

([1]) Council Regulation (EU) 2023/427, of 25 February 2023, amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023 L 59I, p. 6).

([2]) Council Decision 2023/434/CFSP, of 25 February 2023, amending Council Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ 2023, L 59I, p. 593).

Action brought on 16 April 2023 — Fractal Analytics v EUIPO — Fractalia Remote Systems (FRACTALIA)

(Case T-194/23)

(2023/C 189/54)

Language in which the application was lodged: English

Parties

Applicant: Fractal Analytics, Inc. (New York, New York, United States) (represented by: J. Güell Serra, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Fractalia Remote Systems, SL (Madrid, Spain)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark FRACTALIA — European Union trade mark No 3 620 887

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 31 January 2023 in Case R 859/2022-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO and the other party to the proceedings before the EUIPO to pay the costs.

Pleas in law

— Infringement of Article 27(4) of Commission Delegated Regulation (EU) 2018/625 in connection with Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 19(1) of Commission Delegated Regulation (EU) 2018/625;

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 58(1)(a) of Regulation (EU) 2017/1001 of the European Parliament and of the Council and of Article 10(3) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 17 April 2023 — CRA v Council

(Case T-201/23)

(2023/C 189/55)

Language of the case: French

Parties

Applicant: Communications Regulatory Authority (CRA) (Tehran, Iran) (represented by: T. Clay, T. Zahedi Vafa and K. Mehtiyeva, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the General Court should:

— annul Implementing Regulation 2023/152 [1] of 23 January 2023, as being contrary to EU law, in the part which included the applicant in Annex I to Regulation No 359/2011.

Pleas in law and main arguments

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

1. First plea in law, alleging misuse of powers by the Council of the European Union. The applicant submits that by including it on the list of entities subject to the restrictive measures, the Council exceeded its powers, on the ground that the decision was taken solely due to the existence of a statutory relationship between the applicant and the Government of the Islamic Republic of Iran.

2. Second plea in law, alleging failure to state reasons for the contested measure. According to the applicant, the reasons set out as the basis for the decision of the Council are merely factual presumptions whose erroneous nature vitiates the validity of the statement of reasons. That purely formal statement of reasons for the decision implies a reversal of the burden of proof, requiring the applicant to prove a negative fact in order to challenge its inclusion in the list of entities subject to the restrictive measures.

3. Third plea in law, alleging error of assessment of the facts. The applicant submits that the Council, first, made a manifest error of assessment, and, second, that it was wrong to include the applicant in the list of entities subject to the restrictive measures.

4. Fourth plea in law, alleging infringement of the principle of proportionality. The applicant submits that the sanctions imposed on Iran have resulted in the withholding of tools particularly useful for the applicant, one of which is used to prevent the overlap of Iranian frequencies with those of neighbouring States and the other, the Location Based System, for the precise location of connected devices. Furthermore, the disproportionate nature of the Council's decision is demonstrated by the extent of the consequences of the measures taken against the applicant in that the applicant's capacity to perform its public interest mission is seriously affected.

(1) Council Implementing Regulation (EU) 2023/152, of 23 January 2023, implementing Regulation (EU) No 359/2011 concerning restrictive measures against certain persons, entities and organisations regarding the situation in Iran (OJ 2023 L 20 I, p. 1).

Action brought on 19 April 2023 — Studiocanal v EUIPO — Leonine Distribution (ARTHAUS)

(Case T-203/23)

(2023/C 189/56)

Language in which the application was lodged: German

Parties

Applicant: Studiocanal GmbH (Berlin, Germany) (represented by: T. Dolde and C. Zimmer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Leonine Distribution GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark ARTHAUS — EU trade mark No 6 988 216

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 10 February 2023 in Case R 1532/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision, in so far as it found the application for a declaration of invalidity admissible in the light of Article 59(1)(a), read in conjunction with Article 7(1)(b), (c) and (d) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— order EUIPO to pay the costs of the proceedings.

Plea in law

Infringement of Article 63(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 12(1)(b) and Article 15(2) of Delegated Regulation (EU) 2017/1430.

Action brought on 19 April 2023 — Studiocanal v EUIPO — Leonine Distribution (ARTHAUS)

(Case T-204/23)

(2023/C 189/57)

Language in which the application was lodged: German

Parties

Applicant: Studiocanal GmbH (Berlin, Germany) (represented by: T. Dolde and C. Zimmer, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Leonine Distribution GmbH (Munich, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark ‘ARTHAUS’ — EU trade mark No 6 988 984

Proceedings before EUIPO: Invalidity proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 10 February 2023 in Case R 1533/2022-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in so far as it found the application for a declaration of invalidity to be admissible in the light of Article 59(1)(a), read in conjunction with Article 7(1)(b), (c) and (d) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— order EUIPO to pay the costs.

Plea in law

Infringement of Article 63(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, read in conjunction with Article 12(1)(b) and Article 15(2) of Delegated Regulation (EU) 2017/1430.

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