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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE

(2010/C 24/01)

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

OJ C 11, 16.1.2010

Past publications

OJ C 312, 19.12.2009

OJ C 297, 5.12.2009

OJ C 282, 21.11.2009

OJ C 267, 7.11.2009

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OJ C 244, 10.10.2009

These texts are available on:

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

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 3 December 2009 — Faraj Hassan v Council of the European Union, European Commission (C-399/06 P), Chafiq Ayadi, Council of the European Union (C-403/06 P)

(Joined Cases C-399/06 P and C-403/06 P) [1]

(Common foreign and security policy (CFSP) — Restrictive measures taken against persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban — Regulation (EC) No 881/2002 — Freezing of the funds and economic resources of a person following his inclusion in a list drawn up by a body of the United Nations — Sanctions Committee — Subsequent inclusion in Annex I to Regulation (EC) No 881/2002 — Action for annulment — Fundamental rights — Right to respect for property, right to be heard and right to effective judicial review)

(2010/C 24/02)

Language of the case: English

Parties

Appellant: Faraj Hassan (represented by E. Grieves, Barrister, H. Miller, Solicitor, J. Jones, Barrister, M. Arani, Solicitor) (C-399/06 P)

Other parties to the proceedings: Council of the European Union (represented by: S. Marquardt, M. Bishop and E. Finnegan, Agents), European Commission (represented by P. Hetsch and P. Aalto, Agents)

Interveners in support of the appellant: French Republic, United Kingdom of Great Britain and Northern Ireland

Appellant: Chafiq Ayadi (represented by S. Cox, Barrister, H. Miller, Solicitor) (C-403/06 P)

Other parties to the proceedings: Council of the European Union (represented by S. Marquardt, M. Bishop and E. Finnegan, Agents), United Kingdom of Great Britain and Northern Ireland, European Commission (represented by P. Hetsch and P. Aalto, Agents)

Interveners in support of the Council of the European Union: French Republic

Re:

Appeal brought against the judgments of the Court of First Instance (Second Chamber) delivered on 12 July 2006 in Case T-49/04 *Hassan* v *Council and Commission* and in Case T 403/06 *Ayadi* v *Council* by which the Court of First Instance dismissed applications seeking annulment of Commission Regulation (EC) No 2049/2003 of 20 November 2003 amending for the 25th time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 (OJ 2003 L 303, p. 20).

Operative part of the judgment

The Court:

1. *Sets aside the judgments of the Court of First Instance of the European Communities of 12 July 2006 in Case T 49/04 Hassan v Council and Commission and in Case T 253/02 Ayadi v Council;*

2. *Annuls Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan, as amended by Commission Regulation (EC) No 46/2008 of 18 January 2008, in so far as it concerns Mr Hassan;*

3. *Annuls Regulation No 881/2002, as amended by Commission Regulation (EC) No 1210/2006 of 9 August 2006, in so far as it concerns Mr Ayadi;*

4. *Orders the Council of the European Union to pay, in addition to its own costs, the costs incurred by Mr Hassan and Mr Ayadi both at first instance and in these appeals;*

5. *Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs, both at first instance in the case concerning Mr Ayadi and in these appeals;*

6. *Orders the French Republic to bear its own costs;*

7. *Orders the European Commission to bear its own costs both at first instance and in the appeal in the case concerning Mr Hassan. Orders the European Commission, in the case concerning Mr Ayadi, to bear its own costs, in respect both of its intervention before the Court of First Instance of the European Communities and of the proceedings before the Court of Justice of the European Union.*

([1]) OJ C 294, 2.12.2006.

Judgment of the Court (Second Chamber) of 19 November 2009 — Commission of the European Communities v Republic of Finland

(Case C-118/07) ([1])

(Failure of a Member State to fulfil obligations — Article 307, second paragraph, EC — Failure to adopt appropriate steps to eliminate incompatibilities between the bilateral agreements concluded with third countries prior to accession of the Member State to the European Union and the EC Treaty — Bilateral investment agreements concluded by the Republic of Finland with the Russian Federation, the Republic of Belarus, the People's Republic of China, Malaysia, the Democratic Socialist Republic of Sri Lanka and the Republic of Uzbekistan)

(2010/C 24/03)

Language of the case: Finnish

Parties

Applicant: Commission of the European Communities (represented by: M. Huttunen, H. Støvlbæk and B. Martenczuk, Agents)

Defendant: Republic of Finland (represented by: J. Heliskoski, Agent)

Interveners in support of the defendant: Federal Republic of Germany (represented by M. Lumma and C. Blaschke, Agents), Republic of Hungary (represented by J. Fazekas, Agent), Republic of Lithuania (represented by D. Kriaučiūnas, Agent), Republic of Austria (represented by C. Pesendorfer, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of the second paragraph of Article 307 EC — Failure to take the appropriate steps to eliminate the incompatibilities with the Treaty relating to the provisions on transfers in the bilateral investment agreements concluded by the Republic of Finland with the Russian Federation, Belarus, China, Malaysia, Sri Lanka and Uzbekistan

Operative part of the judgment

The Court:

1. *Declares that by not having taken appropriate steps to eliminate incompatibilities with the Treaty concerning the provisions on transfer of capital contained in the investment agreements on the mutual promotion and protection of investments entered into by the Republic of Finland with the former Union of Soviet Socialist Republics of which the Russian Federation is the successor (agreement signed on 8 February 1989), the Republic of Belarus (agreement signed on 28 October 1992), the People's Republic of China (agreement signed on 4 September 1984), Malaysia (agreement signed on 15 April 1985), the Democratic Socialist Republic of Sri Lanka (agreement signed on 27 April 1985) and the Republic of Uzbekistan (agreement signed on 1 October 1992), the Republic of Finland has failed to fulfil its obligations under the second paragraph of Article 307 EC.;*

2. *Orders the Republic of Finland to pay the costs;*

3. *Orders the Federal Republic of Germany, the Republic of Lithuania, the Republic of Hungary and the Republic of Austria to bear their own costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court (Second Chamber) of 6 October 2009 (reference for a preliminary ruling from the Oberster Gerichtshof (Austria)) — PAGO International GmbH v Tirolmilch registrierte Genossenschaft mbH

(Case C-301/07) ([1])

(Trade marks — Regulation (EC) No 40/94 — Article 9(1)(c) — Trade mark with a reputation in the Community — Geographical extent of the reputation)

(2010/C 24/04)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: PAGO International GmbH

Defendant: Tirolmilch registrierte Genossenschaft mbH

Re:

Reference for a preliminary ruling — Oberster Gerichtshof — Interpretation of Article 9(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Rights of the proprietor of a trade mark having a reputation in the Community — Trade mark having a reputation only in one Member State — Protection of the trade mark in the whole of the Community or only in one Member State

Operative part of the judgment

Article 9(1)(c) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark must be interpreted as meaning that, in order to benefit from the protection afforded in that provision, a Community trade mark must be known by a significant part of the public concerned by the products or services covered by that trade mark, in a substantial part of the territory of the European Community, and that, in view of the facts of the main proceedings, the territory of the Member State in question may be considered to constitute a substantial part of the territory of the Community.

([1]) OJ C 223, 22.9.2007.

Judgment of the Court (Third Chamber) of 10 December 2009 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-390/07) ([1])

(Failure of a Member State to fulfil obligations — Environment — Directive 91/271/EEC — Urban waste water treatment — Article 3(1) and (2), Article 5(1) to (3) and (5) and Annexes I and II — Initial failure to identify sensitive areas — Concept of 'eutrophication' — Criteria — Burden of proof — Relevant date when considering the evidence — Implementation of collection obligations — Implementation of more stringent treatment of discharges into sensitive areas)

(2010/C 24/05)

Language of the case: English

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán, X. Lewis and H. van Vliet, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland (represented by: C. Gibbs and V. Jackson, Agents, D. Anderson QC and S. Ford, Barrister)

Intervener in support of the defendant: Portuguese Republic (represented by: L. Inez Fernandes and M.J. Lois, Agents)

Re:

Failure of a Member State to fulfil obligations — Articles 3(1) and (2) and 5(1) to (3) and (5) of, and Annex II to, Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40) — Failure to identify certain areas as sensitive areas with respect to eutrophication and to subject urban waste water from agglomerations with a population equivalent of more than 10 000 to more stringent treatment where it is discharged into sensitive areas or areas which should have been identified as sensitive.

Operative part of the judgment

The Court:

1. *Declares that, by having failed to subject discharges of urban waste water from Craigavon (Ballynacor and Bullay's Hill treatment plants) and Magherafelt to more stringent treatment, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under Article 5(2), (3) and (5) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment;*

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

3. *Orders the European Commission to pay the costs of the United Kingdom of Great Britain and Northern Ireland;*

4. *Orders the Portuguese Republic to bear its own costs.*

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Fourth Chamber) of 19 November 2009 (references for preliminary rulings from the Bundesgerichtshof (Germany) and the Handelsgericht Wien (Austria)) — Christopher Sturgeon, Gabriel Sturgeon, Alana Sturgeon, (C-402/07), Stefan Böck, Cornelia Lepuschitz (C-432/07) v Condor Flugdienst GmbH (C-402/07), Air France SA (C-432/07)

(Joined Cases C-402/07 and C-432/07) ([1])

(Air transport — Regulation (EC) No 261/2004 — Article 2(l) and Articles 5, 6 and 7 — Concept of flight 'delay' and 'cancellation' — Right to compensation in the event of delay — Concept of 'extraordinary circumstances')

(2010/C 24/06)

Language of the case: German

Referring courts

Bundesgerichtshof, Handelsgericht Wien

Parties to the main proceedings

Applicants: Christopher Sturgeon, Gabriel Sturgeon, Alana Sturgeon (C-402/07), Stefan Böck, Cornelia Lepuschitz (C-432/07)

Defendants: Condor Flugdienst GmbH (C-402/07), Air France SA (C-432/07)

Re:

References for preliminary rulings — Bundesgerichtshof, Handelsgericht Wien — Interpretation of Articles 2(l) and 5(1)(c) of 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) — Flight which departed much later than the scheduled time of departure — Distinction between the concepts of 'delay' and 'cancellation'

Operative part of the judgment

1. *Articles 2(l), 5 and 6 of 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, must be interpreted as meaning that a flight which is delayed, irrespective of the duration of the delay, even if it is long, cannot be regarded as cancelled where the flight is operated in accordance with the air carrier's original planning.*

2. *Articles 5, 6 and 7 of Regulation No 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.*

3. *Article 5(3) of Regulation No 261/2004 must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation or delay of a flight is not covered by the concept of 'extraordinary circumstances' within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.*

(1) OJ C 283, 24.11.2007.

Judgment of the Court (Second Chamber) of 19 November 2009 — Commission of the European Communities v Italian Republic

(Case C-540/07) (1)

(Failure of a Member State to fulfil obligations — Free movement of capital — Article 56 EC — Articles 31 and 40 of the EEA Agreement — Direct taxation — Withholding at source on outgoing dividends — Set-off at the place of establishment of the recipient of the dividend, pursuant to a convention for the avoidance of double taxation)

(2010/C 24/07)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal and A. Aresu, Agents)

Defendant: Italian Republic (represented by: R. Adam, Agent, P. Gentili, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 56 EC and 40 EEA — Tax system more onerous, for dividends distributed to companies established in other Member States and in EEA States, than that applied to 'domestic' dividends

Operative part of the judgment

The Court:

1. *Declares that, by making dividends distributed to companies established in other Member States subject to a less favourable tax regime than that applied to dividends distributed to resident companies, the Italian Republic has failed to fulfil its obligations under Article 56(1) EC.;*

2. *Dismisses the action as to the remainder.*

3. *Orders the Italian Republic to pay three quarters of the costs. The Commission of the European Communities is ordered to pay the remaining quarter.*

(1) OJ C 37, 9.2.2008.

Judgment of the Court (Grand Chamber) of 2 December 2009 — European Commission v Ireland, French Republic, Italian Republic, Eurallumina SpA, Aughinish Alumina Ltd

(Case C-89/08 P) (1)

(Appeal — State aid — Exemption from excise duty on mineral oils — Regulation (EC) No 659/1999 — Article 1(b)(v) — Failure to state reasons — Court acting of its own motion — Plea involving a matter of public policy raised by the Community judicature — Infringement of the rule that the parties should be heard — Scope of the obligation to state reasons)

(2010/C 24/08)

Language of the case: French, English and Italian

Parties

Appellant: European Commission (represented by: V. Di Bucci and N. Khan, Agents)

Other parties to the proceedings: Ireland (represented by: D. O'Hagan, Agent and by P. McGarry BL), French Republic (represented by: G. de Bergues and A.-L. Vendrolini, Agents), Italian Republic (represented by R. Adam, Agent and by G. Aiello, avvocato dello Stato), Eurallum SpA (represented by R. Denton, Solicitor), Aughinish Alumina Ltd (represented by: J. Handoll and C. Waterson, Solicitors)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber, Extended Composition) of 12 December 2007 in Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 *Ireland and Others* v *Commission*, by which the Court of First Instance annulled Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy (OJ 2006 L 119, p. 12) — Concepts of existing aid and new aid — Objective concepts — Lack of reasoning — Plea of public policy to be raised automatically by the Community Court — Breach of the principle that the action is confined to the subject-matter as delimited in the application and general principles of the adversarial system and respect of the rights of the defence.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the Court of First Instance of the European Communities of 12 December 2007 in Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 Ireland and Others v Commission in so far as it:*

   — *annulled Commission Decision 2006/323/EC of 7 December 2005 concerning the exemption from excise duty on mineral oils used as fuel for alumina production in Gardanne, in the Shannon region and in Sardinia respectively implemented by France, Ireland and Italy, on the ground that, in that decision, the Commission of the European Communities failed to fulfil its obligation to state reasons with regard to the non-application in the present case of Article 1(b)(v) of Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88 EC]; and*

   — *ordered the Commission of the European Communities to bear its own costs and to pay those of the applicants, including the costs relating to the interim proceedings in Case T-69/06 R;*

2. *Refers Joined Cases T-50/06, T-56/06, T-60/06, T-62/06 and T-69/06 back to the General Court of the European Union;*

3. *Orders that costs are reserved.*

(1) OJ C 116, 9.5.2008.

Judgment of the Court (Grand Chamber) of 17 November 2009 (reference for a preliminary ruling from the Corte costituzionale (Italy)) — Presidente del Consiglio dei Ministri v Regione autonoma della Sardegna

(Case C-169/08) (1)

(Freedom to provide services — Article 49 EC — State aid — Article 87 EC — Regional legislation establishing a tax on stopovers for tourist purposes by aircraft used for the private transport of persons, or by recreational craft, to be imposed only on operators whose tax domicile is outside the territory of that region)

(2010/C 24/09)

Language of the case: Italian

Referring court

Corte costituzionale (Italy)

Parties to the main proceedings

Applicant: Presidente del Consiglio dei Ministri

Defendant: Regione autonoma della Sardegna

Re:

Reference for a preliminary ruling — Corte Costituzionale (Italy) — Interpretation of Articles 49 and 87 EC — Regional legislation under which a tax is imposed in respect of stopovers for tourist purposes by aircraft only on undertakings, operating

aircraft for the transport of persons or goods by way of an activity ancillary to their main business, whose tax domicile is outside Sardinia — State aid, in the form of an exclusion from the obligation to pay the tax, to undertakings carrying on the same activities whose tax domicile is in Sardinia

Operative part of the judgment

1. *Article 49 EC must be interpreted as precluding tax legislation, adopted by a regional authority, such as that provided for under Article 4 of Law No 4 of the Region of Sardinia of 11 May 2006 (Miscellaneous provisions on revenue, reclassification of costs, social policy and development) as amended by Article 3(3) of Law No 2 of the Region of Sardinia of 29 May 2007 (Provisions for the preparation of the annual and long-term budget of the Region — 2007 Finance Law), which establishes a regional tax on stopovers for tourist purposes by aircraft used for the private transport of persons, or by recreational craft, to be imposed only on natural and legal persons whose tax domicile is outside the territory of the region.*

2. *Article 87(1) EC must be interpreted as meaning that tax legislation, adopted by a regional authority, which establishes a tax on stopovers, such as that at issue in the main proceedings, to be imposed only on natural and legal persons whose tax domicile is outside the territory of the region, constitutes a State aid measure in favour of undertakings established in that territory.*

([1]) OJ C 171, 05.07.2008.

Judgment of the Court (Second Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Umweltsenat — Austria) — Umweltanwalt von Kärnten v Kärntner Landesregierung

(Case C-205/08) ([1])

(Reference for a preliminary hearing — Article 234 EC — Concept of 'national court or tribunal' — Admissibility — Directive 85/337/EEC — Environmental impact assessment — Construction of overhead electrical power lines — Length of more than 15 km — Transboundary constructions — Transboundary power line — Total length exceeding the threshold — Line mainly situated in the territory of a neighbouring Member State — Length of national section below the threshold)

(2010/C 24/10)

Language of the case: German

Referring court

Umweltanwalt von Kärnten

Parties to the main proceedings

Applicant: Umweltanwalt von Kärnten

Defendant: Kärntner Landesregierung

Re:

Reference for a preliminary ruling — Umweltsenat (Austria) — Interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 amending Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (OJ 1997 L 73, p. 5) and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) — Requirement for an environment impact assessment for constructions of overhead electrical power lines of a length of more than 15 km — Length to be taken into account in the case of trans-frontier constructions — Scheme for an electrical power line with a total length exceeding the threshold but with only a section of 7.4 km on national territory, the remainder being situated on the territory of the neighbouring Member State.

Operative part of the judgment

Articles 2(1) and 4(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, are to be interpreted as meaning that the competent authorities of a Member State must make a project referred to in point 20 of Annex I to the Directive, such as the construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 km, subject to the environmental impact assessment procedure even where the project is transboundary in nature and less than 15 km of it is situated on the territory of that Member State.

([1]) OJ C 209, 15.8.2008.

Judgment of the Court (Third Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Bundesgerichtshof — Germany) — Bundesfinanzdirektion West v Heko Industrieerzeugnisse GmbH

(Case C-260/08) [1]

(Community Customs Code — Article 24 — Non-preferential origin of goods — Definition of 'substantial processing or working' — Criterion for a change of tariff heading — Steel cables manufactured in North Korea using stranded steel wire originating in China)

(2010/C 24/11)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Bundesfinanzdirektion West

Defendant: Heko Industrieerzeugnisse GmbH

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ 1992 L 302, p. 1) –Determining the origin of steel cables manufactured in North Korea under a process using steel wires originating in China — Criteria to be taken into consideration for the purpose of treating a given manufacturing stage as establishing the non-preferential origin of a product — Potential significance of the fact that the tariff heading remains unchanged subsequent to the processing at issue.

Operative part of the judgment

With regard to goods classified under heading 7312 of the Combined Nomenclature constituting 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, as amended by Commission Regulation (EC) No 1719/2005 of 27 October 2005, 'substantial processing or working' within the meaning of Article 24 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, may cover not only such processing or working as leads to the goods which have undergone the process being classified under a different heading of the Combined Nomenclature, but also such processing or working as results, without such a change of heading, in the creation of a product with properties and a composition of its own which it did not have before the process.

[1] OJ C 247, 27.9.2008.

Judgment of the Court (Second Chamber) of 19 November 2009 (reference for a preliminary ruling from the Svea Hovrätt (Sweden)) — Kemikalieinspektionen v Nordiska Dental AB

(Case C-288/08) [1]

(Reference for a preliminary ruling — Directive 93/42/EEC — Medical devices — Prohibition on the exportation of dental amalgam containing mercury and bearing the 'CE' conformity marking — Protection of health and the environment)

(2010/C 24/12)

Language of the case: Swedish

Referring court

Svea Hovrätt

Parties to the main proceedings

Applicant: Kemikalieinspektionen

Defendant: Nordiska Dental AB

Re:

Reference for a preliminary ruling — Svea Hovrätt — Interpretation of Articles 29 EC and 30 EC and of Article 4(1) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices (OJ 1993 L 169, p. 1) — National legislation prohibiting export of dental amalgam containing mercury

Operative part of the judgment

Article 4(1) of Council Directive 93/42/EEC of 14 June 1993 concerning medical devices, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as precluding legislation of a Member State, such as the legislation at issue in the main proceedings, under which the commercial exportation of dental amalgams containing mercury and bearing the 'CE' marking provided for in Article 17 of that directive is prohibited on grounds relating to protection of the environment and of health.

[1] OJ C 209, 15.8.2008.

Judgment of the Court (Third Chamber) of 10 December 2009 — European Commission v French Republic

(Case C-299/08) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/18/EC — Procedures for the award of public contracts — National legislation providing for a single procedure for the award of the contract defining needs and of the ensuing marché d'exécution — Compatibility with that directive)

(2010/C 24/13)

Language of the case: French

Parties

Applicant: European Commission (represented by: D. Kukovec, G. Rozet and M. Konstantinidis, Agents)

Defendant: French Republic (represented by: G. de Bergues, J.C. Gracia and J.-S. Pilczer, Agents)

Re:

Failure of a Member State to fulfil obligations — Breach of Articles 2, 28 and 31 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114) — Use of the negotiated procedure without publication of a contract notice in situations not provided for in Directive 2004/18 — Distinction between *marchés de définition* (public contracts for designing the parameters, including the purpose, of a public works, supply or service contract), subject to the rules of the Directive, and public works, supply or service contracts, not subject to those rules — Breach of the principles of transparency and equal treatment.

Operative part of the judgment

The Court:

1. *Declares that, by adopting and keeping in force Articles 73 and 74-IV of the Public Procurement Code, adopted by Decree No 2006-975 of 1 August 2006, inasmuch as those provisions lay down a procedure for the award of marchés de definition (public contracts for designing the parameters, including the purpose, of a public works, supply or service contract) under which it is possible for the contracting authority to award a marché d'exécution (a public works, supply or service contract) to one of the holders of the initial marchés de définition by opening it to competition limited to those holders, the French Republic has failed to fulfil its obligations under Articles 2 and 28 of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts;*

2. *Dismisses the remainder of the action;*

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

([1]) OJ C 272, 25.10.2008.

Judgment of the Court (Third Chamber) of 19 November 2009 (Reference for a preliminary ruling from the Wojewódzki Sąd Administracyjny w Poznaniu — Poland) — Krzysztof Filipiak v Dyrektor Izby Skarbowej w Poznaniu

(Case C-314/08) ([1])

(Income tax legislation — Right to deduct social security contributions from the basis of assessment for tax — Right to a tax reduction on the basis of health insurance contributions paid — Refusal where contributions are paid in a Member State other than the State of taxation — Whether compatible with Articles 43 EC and 49 EC — Judgment of the national constitutional court — Unconstitutionality of provisions of national law — Deferral of the date on which those provisions are to lose their binding force — Primacy of Community law — Implications for the national court)

(2010/C 24/14)

Language of the case: Polish

Referring court

Wojewódzki Sąd Administracyjny w Poznaniu

Parties to the main proceedings

Applicant: Krzysztof Filipiak

Defendant: Dyrektor Izby Skarbowej w Poznaniu

Re:

Reference for a preliminary ruling — Wojewódzki Sąd Administracyjny we Poznaniu — Interpretation of Articles 10 and 43 of the EC Treaty — National income-tax legislation restricting social insurance contributions deductible from the basis of assessment, and health insurance contributions deductible from tax, solely to contributions paid in the Member State

Operative part of the judgment

1. *Articles 43 EC and 49 EC preclude national legislation under which the possibility for a resident taxpayer to obtain, first, a deduction from the basis of assessment in the amount of social security contributions paid in the tax year and, second, a reduction of the income tax which he is liable to pay by the amount of health insurance contributions paid in that period, exists solely when those contributions are paid in the Member State of taxation, while such advantages are refused in the case where those contributions are paid in another Member State, even though those contributions were not deducted in that other Member State.*

2. *In those circumstances, the primacy of Community law obliges the national court to apply Community law and to refuse to apply conflicting provisions of national law, irrespective of the judgment of the national constitutional court which has deferred the date on which those provisions, held to be unconstitutional, are to lose their binding force.*

([1]) OJ C 247, 27.9.2008.

Judgment of the Court (Fourth Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Tribunal Superior de Justicia de Madrid (Spain)) — Ovidio Rodríguez Mayor, Pilar Pérez Boto, Pedro Gallego Morzillo, Alfonso Francisco Pérez, Juan Marcelino Gabaldón Morales, Marta María Maestro Campo, Bartolomé Valera Huete v Unclaimed estate of Rafael de las Heras Dávila and Sagrario de las Heras Dávila

(Case C-323/08) ([1])

(Reference for a preliminary ruling — Protection of workers — Collective redundancies — Directive 98/59/EC — Termination of contracts of employment as a result of the death of the employer)

(2010/C 24/15)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Madrid

Parties to the main proceedings

Applicants: Ovidio Rodríguez Mayor, Pilar Pérez Boto, Pedro Gallego Morzillo, Alfonso Francisco Pérez, Juan Marcelino Gabaldón Morales, Marta María Maestro Campo and Bartolomé Valera Huete

Defendants: Unclaimed estate of Rafael de las Heras Dávila and Sagrario de las Heras Dávila

Re:

Reference for a preliminary ruling — Tribunal Superior de Justicia de Madrid — Interpretation of Articles 1, 2, 3, 4 and 6 of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies (OJ 1998 L 225, p. 16) — National legislation restricting the concept of redundancy solely to dismissals made on economic, technical, organisational or production grounds — Termination of contracts of employment by reason of the death, retirement or incapacity of the employer — Different compensation in the two cases — Whether compatible with the Charter of fundamental rights of the European Union and the Community Charter of the fundamental social rights of workers

Operative part of the judgment

1. *Article 1(1) of Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies must be interpreted as not precluding national legislation according to which the termination of contracts of employment of a number of workers, whose employer is a natural person, as a result of the death of that employer is not classified as collective redundancy;*

2. *Directive 98/59 does not preclude national legislation which provides for different compensation depending on whether the workers lost their jobs as a result of the death of the employer or as a result of a collective redundancy.*

([1]) OJ C 236, 13.9.2008.

Judgment of the Court (Third Chamber) of 10 December 2009 (Reference for a preliminary ruling from the Verwaltungsgericht Schwerin — Germany) — Krzysztof Peśla v Justizministerium Mecklenburg-Vorpommern

(Case C-345/08) ([1])

(Freedom of movement for workers — Article 39 EC — Refusal of access to serve as a legal trainee — Candidate who obtained his law diploma in another Member State — Criteria for assessment of the equivalence of knowledge acquired)

(2010/C 24/16)

Language of the case: German

Referring court

Verwaltungsgericht Schwerin

Parties to the main proceedings

Applicant: Krzysztof Peśla

Defendant: Justizministerium Mecklenburg-Vorpommern

Re:

Reference for a preliminary ruling — Verwaltungsgericht Schwerin — Interpretation of Article 39 EC — Decision refusing access to the period of preparatory legal training for the regulated legal professions addressed to a candidate who obtained his legal diploma in another Member State — Criteria for assessment of the equivalence of education and training.

Operative part of the judgment

1. *Article 39 EC must be interpreted as meaning that the knowledge to be taken as a reference point for the purposes of assessing the equivalence of training following an application for direct admission to a legal traineeship for the legal professions, without taking the exams he would otherwise have to sit, is that attested by the qualification required in the Member State in which the candidate seeks to be admitted to serve such a legal traineeship.*

2. *Article 39 EC must be interpreted as meaning that, where the competent authorities of a Member State consider an application of a national of another Member State to be admitted to serve a practical training period, such as a legal traineeship for the legal professions in Germany, with a view to exercising a regulated legal profession at a later date, that article does not of itself oblige those authorities to require from the candidate, in the examination of equivalence required by Community law, merely a level of legal knowledge which is lower than that attested by the qualification required in that Member State for access to such a period of practical training. However, Article 39 EC does not preclude a degree of flexibility as regards the qualification required. Moreover it is important that, in practice, the possibility of partial recognition of the knowledge attested by qualifications which the person concerned has obtained should be more than merely notional. That is a matter for the national court to determine.*

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Grand Chamber) of 2 December 2009 (Reference for a preliminary ruling from the House of Lords, United Kingdom) — Aventis Pasteur SA v OB

(Case C-358/08) ([1])

(Directive 85/374/EEC — Liability for defective products — Articles 3 and 11 — Mistake in the classification of 'producer' — Judicial proceedings — Application for substitution of the producer for the original defendant — Expiry of the limitation period)

(2010/C 24/17)

Language of the case: English

Referring court

House of Lords

Parties to the main proceedings

Applicant: Aventis Pasteur SA

Defendant: OB

Re:

Reference for a preliminary ruling — House of Lords — Interpretation of 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) — Action brought against a company wrongly considered to be the producer of the allegedly defective product — Whether another party may be substituted for the defendant after the ten-year limitation period laid down in Article 11 of the Directive — Person designated as defendant in the proceedings brought during the ten-year period not a 'producer' as defined in Article 3 of the Directive

Operative part of the judgment

Article 11 of 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 must be interpreted as precluding national legislation, which allows the substitution of one defendant for another during proceedings, from being applied in a way which permits a 'producer', within the meaning of Article 3 of that directive, to be sued, after the expiry of the period prescribed by that article, as defendant in proceedings brought within that period against another person.

However, first, Article 11 must be interpreted as not precluding a national court from holding that, in the proceedings instituted within the period prescribed by that article against the wholly-owned subsidiary of the 'producer', within the meaning of Article 3(1) of Directive 85/374, that producer can be substituted for that subsidiary if that court finds that the putting into circulation of the product in question was, in fact, determined by that producer.

Second, Article 3(3) of Directive 85/374 must be interpreted as meaning that, where the person injured by an allegedly defective product was not reasonably able to identify the producer of that product before exercising his rights against the supplier of that product, that supplier must be treated as a 'producer' for the purposes, in particular, of the application of Article 11 of that directive, if it did not inform the injured person, on its own initiative and promptly, of the identity of the producer or its own supplier. That is for the national court to determine in the light of the circumstances of the case.

([1]) OJ C 260, 11.10.2008.

Judgment of the Court (Second Chamber) of 26 November 2009 (reference for a preliminary ruling from the Verwaltungsgerichtshof (Austria)) — Romana Slanina v Unabhängiger Finanzsenat, Außenstelle Wien

(Case C-363/08) ([1])

(Social security for migrant workers — Family allowances — Refusal — National of one Member State resident with her child in another Member State, while the father of the child works in the former Member State)

(2010/C 24/18)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Romana Slanina

Defendant: Unabhängiger Finanzsenat, Außenstelle Wien

Re:

Reference for a preliminary ruling — Verwaltungsgerichtshof (Austria) — Interpretation of Article 73 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self–employed persons and to members of their families moving within the Community (OJ 1971 L 149, p. 2) — National legislation providing for the payment of a family allowance (Familienbeihilfe) to persons who have the care of a child and who are permanently resident on national territory — Refusal to grant the allowance to an Austrian national who has settled with her child in another Member State, the father of the child having remained permanently resident on national territory and being in employment there

Operative part of the judgment

1. *Article 73 of Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, in the version amended and updated by Council Regulation (EC) No 118/97 of 2 December 1996, must be interpreted as meaning that a divorced person who was paid family allowances by the competent institution of the Member State in which she was living and where her ex-husband continues to live and work maintains in respect of her child, provided that child is recognised as a 'member of the family' of the ex-husband within the meaning of Article 1(f)(i) of that regulation, entitlement to such allowances even though she leaves that State and settles with her child in another Member State, where she does not work, and even though her ex-husband could receive those allowances in his Member State of residence.*

2. *The fact that a person in a situation such as that of the applicant in the main proceedings is in employment in her Member State of residence, giving entitlement to family allowances, has, under Article 76 of Regulation No 1408/71, in the version amended and updated by Regulation No 118/97, the effect of suspending entitlement to family allowances payable under the legislation of the Member State in whose territory her ex-husband is in employment, up to the sum provided for by the legislation of her Member State of residence.*

([1]) OJ C 285, 8.11.2008.

Judgment of the Court (Fourth Chamber) of 3 December 2009 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Yaesu Europe BV v Bundeszentralamt für Steuern

(Case C-433/08) ([1])

(Eighth VAT Directive — Arrangements for the refund of VAT to taxable persons not established in the territory of the country — Annex A — Application for a refund — Meaning of 'signature' of that application — National legislation requiring the personal signature of the taxable person, or of the statutory representative of that person, and ruling out signature by an agent)

(2010/C 24/19)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Yaesu Europe BV

Defendant: Bundeszentralamt für Steuern

Re:

Reference for a preliminary ruling — Bundesfinanzhof (Germany) — Interpretation of the specimen application in Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country (OJ 1979 L 331, p. 11) — 'Signature' as referred to in the model application for a refund — National legislation requiring the personal signature of the applicant, or of the applicant's statutory representative, and ruling out signature by an agent

Operative part of the judgment

'Signature' of an application for a refund of value added tax, as referred to in the specimen form set out in Annex A to the Eighth Council Directive 79/1072/EEC of 6 December 1979 on the harmonisation of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in the territory of the country, is a Community law notion which must be interpreted uniformly to the effect that such a refund application need not necessarily be signed by the taxable person in person and that the signature of an agent may be sufficient for those purposes.

([1]) OJ C 313, 6.12.2008.

Judgment of the Court (Sixth Chamber) of 10 December 2009 — Commission of the European Communities v Hellenic Republic

(Case C-460/08) ([1])

(Failure of a Member State to fulfil obligations — Article 39 EC — Employment in the public service — Captain and officer (chief mate) on vessels — Conferment of powers of public authority on board — Requirement that they must be nationals of the Member State whose flag the vessels are flying)

(2010/C 24/20)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and D. Triantafyllou, acting as Agents)

Defendant: Hellenic Republic (represented by: E.-M. Mamouna, acting as Agent)

Re:

Failure of a Member State to fulfil obligations — Infringement of Article 39 of the EC Treaty — National legislation which reserves for Greek nationals access to the posts of captain and officer (chief mate) on all commercial and fishing vessels flying the Greek flag

Operative part of the judgment

The Court:

1. *Declares that in requiring in its legislation Greek nationality for access to the posts of captain and officer (chief mate) on all vessels flying the Greek flag, the Hellenic Republic has failed to fulfil its obligations under Community law and, in particular, under Article 39 EC.*

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

([1]) OJ C 327 of 20.12.2008

Judgment of the Court (Fourth Chamber) of 19 November 2009 (reference for a preliminary ruling from the Hoge Raad der Nederlanden — Netherlands) — Don Bosco Onroerend Goed BV v Staatssecretaris van Financiën

(Case C-461/08) ([1])

(Sixth VAT Directive — Interpretation of Articles 13B(g) and 4(3)(a) — Supply of land occupied by a partly demolished building in place of which a new building is to be constructed — VAT Exemption)

(2010/C 24/21)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Don Bosco Onroerend Goed BV

Defendant: Staatssecretaris van Financiën

Re:

Reference for a preliminary ruling — Hoge Raad der Nederlanden, The Hague — Interpretation of Article 4(3)(a), read in conjunction with Article 13B(g), of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) — Taxation of the supply of a building or part of a building and the adjacent ground prior to its first occupation — Supply of a partially demolished building by reason of its replacement by a new building to be constructed

Operative part of the judgment

Article 13B(g) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, in conjunction with Article 4(3)(a) of the directive must be interpreted as meaning that the exemption from value added tax provided for in Article 13B(g) does not cover the supply of land still occupied by a dilapidated building that is to be demolished and replaced by a new building and whose demolition, paid for by the vendor, had already begun before the actual supply took place. For value added tax purposes, such supply and such demolition form a single transaction, given that, taken as a whole, the aim of the transactions was not to supply the existing building and the land it stands

on but land that has not been built on, regardless of how far demolition of the old building had progressed at the moment the land was actually supplied.

(1) OJ C 69 of 21.03.2009

Judgment of the Court (Sixth Chamber) of 3 December 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-475/08) (1)

(Failure of a Member State to fulfil obligations — Directive 2003/55/EC — Internal market in natural gas — Definitive designation of system operators — Decision exempting major new gas infrastructures from the application of certain provisions of Directive 2003/55/EC — Publication, consultation and notification obligations)

(2010/C 24/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: M. Patakia and B. Schima, Agents)

Defendant: Kingdom of Belgium (represented by: C. Pochet, Agent, J. Scalais and O. Vanhulst, avocats)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt all the provisions necessary to comply with Articles 7, 11 and 18, in conjunction with Article 25(2), and Article 22(3)(d) and (e) and (4) of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC (OJ 2003 L 176, p. 57) — Failure to designate systems operators for the transmission and storage of liquefied natural gas — No requirement to publish the decision exempting new large natural gas facilities from the application of the directive — No requirement to consult the other Member States or regulatory authorities concerned by the interconnection of those facilities.

Operative part of the judgment

The Court:

1. *Declares that, by failing to designate transmission, storage and liquefied natural gas system operators on a definitive basis as required under Article 7 of Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas and repealing Directive 98/30/EC, and by failing to transpose Article 22(3)(d) and (e) and (4) of that directive, the Kingdom of Belgium has failed to fulfil its obligations under those provisions;*

2. *Orders the Kingdom of Belgium to pay the costs.*

(1) OJ C 32, 7.2.2009.

Judgment of the Court (Eighth Chamber) of 3 December 2009 — Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Commission

(Case C-476/08 P) (1)

(Appeal — Regulations (EC, Euratom) Nos 1605/2002 and 2342/2002 — Public contracts awarded by the Community institutions on their own account — Error in the evaluation committee's report — Obligation to state reasons for the rejection of the tender's bid)

(2010/C 24/23)

Language of the case: English

Parties

Appellant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (represented by: (N. Korogiannakis, dikigoros)

Other party to the proceedings: European Commission (represented by: M. Wilderspin and E. Manhaeve, Agents)

Re:

Appeal brought against the judgment of the Court of First Instance (Third Chamber) of 10 September 2008 in Case T-59/05 *Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE* v *Commission of the European Communities* by which the Court of First Instance dismissed an action for the annulment of the Commission's decision of 23 November 2004 rejecting the tender submitted by the appellant in the tendering procedure relating to the provision of development, maintenance and related support services for the financial information systems of the Directorate-General for Agriculture and of the decision awarding the contract to another tenderer — Obligation to state reasons for the rejection of a submitted tender

Operative part of the judgment

The Court:

1. *Dismisses the appeal;*

2. *Orders Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE to pay the costs.*

(1) OJ C 19, 24.1.2009.

Judgment of the Court (Seventh Chamber) of 26 November 2009 — Commission of the European Communities v Italian Republic

(Case C-13/09) [1]

(Failure of a Member State to fulfil its obligations — Directive 2006/86/EC — Traceability requirements — Notification of serious adverse reactions and events — Technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells — Failure to adopt within the prescribed period)

(2010/C 24/24)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and S. Mortoni, acting as Agents)

Defendant: Italian Republic (represented by: G. Calmieri, acting as Agent, and F. Arena, avvocato dello Stato)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells (OJ 2006 L 294, p. 32)

Operative part of the judgment

The Court:

1. *declares that the Italian Republic has failed to fulfil its obligations under Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells, by not adopting all the laws, regulations and administrative provisions necessary to comply with that directive;*

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

[1] OJ C 55, 7.3.2009.

Judgment of the Court (Fifth Chamber) of 10 December 2009 — European Commission v United Kingdom of Great Britain and Northern Ireland

(Case C-187/09) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/40/EC — Air conditioning in motor vehicles — Incomplete transposition)

(2010/C 24/25)

Language of the case: English

Parties

Applicant: European Commission (represented by: O. Beynet and S. Walker, Agents)

Defendants: United Kingdom of Great Britain and Northern Ireland (represented by: S. Ossowski, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to have taken, within the prescribed period, the necessary provisions to comply with Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending Council Directive 70/156/EEC (OJ 2006 L 161, p. 12).

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/40/EC of the European Parliament and of the Council of 17 May 2006 relating to emissions from air-conditioning systems in motor vehicles and amending Council Directive 70/156/EEC, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;*

2. *Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.*

[1] OJ C 167, 18.7.2009.

Judgment of the Court (Eighth Chamber) of 26 November 2009 — Commission of the European Communities v Ireland

(Case C-202/09) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Electronic communications — Respect for private life — Retention of data generated or processed in connection with the provision of electronic communications services — Failure to transpose within the prescribed period)

(2010/C 24/26)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: L. Balta and A.-A. Gilly, Agents)

Defendant: Ireland (represented by: D. O'Hagan, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ 2006 L 105, p. 54)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, Ireland has failed to fulfil its obligations under that directive.*

2. *Orders Ireland to pay the costs.*

[1] OJ C 167, 18.7.2009.

Judgment of the Court (Second Chamber) of 26 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-211/09) [1]

(Failure of a Member State to fulfil obligations — Directive 2006/24/EC — Electronic communications — Failure to transpose within the prescribed period)

(2010/C 24/27)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: L. Balta and M. Karanasou Apostolopoulou, acting as Agents)

Defendant: Hellenic Republic (represented by: N. Dafniou and K. Vasiliki, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt within the prescribed period all the measures necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC (OJ L 105, p. 54)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the prescribed periods, all the laws, regulations and administrative provisions necessary to comply with Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, the Hellenic Republic has failed to fulfil its obligations under that directive.*

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

[1] OJ C 193 of 15.08.2009

Judgment of the Court (Grand Chamber) of 30 November 2009 (Reference for a preliminary ruling from the Administrativen sad Sofia-grad — Bulgaria) — Said Shamilovich Kadzoev (Huchbarov)

(Case C-357/09 PPU) [1]

(Visas, asylum, immigration and other policies related to free movement of persons — Directive 2008/115/EC — Return of illegally staying third-country nationals — Article 15(4) to (6) — Period of detention — Taking into account the period during which the execution of a removal decision was suspended — Concept of 'reasonable prospect of removal')

(2010/C 24/28)

Language of the case: Bulgarian

Referring court

Administrativen sad Sofia-grad — Bulgaria

Party to the main proceedings

Applicant: Said Shamilovich Kadzoev (Huchbarov)

Re:

Reference for a preliminary ruling — Administrativen sad Sofia-grad — Interpretation of Article 15(4), (5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ 2008 L 348, p. 98) — Exceeding of the maximum period of detention, laid down by Article 15 of that directive, in relation to a third-country national in an irregular situation — Exceeding of that maximum duration at the date of entry into force of the directive, but before its transposition into national law, which places no time-limits on detention — Application of the rules of the directive after their transposition into national law and absence of retroactive effect for pending cases — Calculation of maximum period of detention not taking account of time elapsing during proceedings challenging the national authorities' removal decision — Whether exceeding of that duration permissible if based on lack of identification documents and means of subsistence and on the aggressive conduct of the person concerned — Meaning of "reasonable prospect of removal"

Operative part of the judgment

1. *Article 15(5) and (6) of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals must be interpreted as meaning that the maximum duration of detention laid down in those provisions must include a period of detention completed in connection with a removal procedure commenced before the rules in that directive become applicable.*

2. *A period during which a person has been held in a detention centre on the basis of a decision taken pursuant to the provisions of national and Community law concerning asylum seekers may not be regarded as detention for the purpose of removal within the meaning of Article 15 of Decision 2008/115.*

3. *Article 15(5) and (6) of Directive 2008/115 must be interpreted as meaning that the period during which execution of the decree of deportation was suspended because of a judicial review procedure brought against that decree by the person concerned is to be taken into account in calculating the period of detention for the purpose of removal, where the person concerned continued to be held in a detention facility during that procedure.*

4. *Article 15(4) of Directive 2008/115 must be interpreted as not being applicable where the possibilities of extending the periods of detention provided for in Article 15(6) of Directive 2008/115 have been exhausted at the time when a judicial review of the detention of the person concerned is conducted.*

5. *Article 15(4) of Directive 2008/115 must be interpreted as meaning that only a real prospect that removal can be carried out successfully, having regard to the periods laid down in Article 15(5) and (6), corresponds to a reasonable prospect of removal, and that that reasonable prospect does not exist where it appears unlikely that the person concerned will be admitted to a third country, having regard to those periods.*

6. *Article 15(4) and (6) of Directive 2008/115 must be interpreted as not allowing, where the maximum period of detention laid down by that directive has expired, the person concerned not to be released immediately on the grounds that he is not in possession of valid documents, his conduct is aggressive, and he has no means of supporting himself and no accommodation or means supplied by the Member State for that purpose.*

[1] OJ C 267, 7.11.2009.

Order of the Court (Eight Chamber) of 24 September 2009 — Compagnie des bateaux mouches SA v Office for Harmonization in the Internal Market (trade marks and designs), Jean-Noël Castanet

(Case C-78/09 P) [1]

(Appeal — Community trade mark — Word mark BATEAUX MOUCHES — Refusal of registration — Absence of any distinctive character)

(2010/C 24/29)

Language of the case: French

Parties

Appellant: Compagnie des bateaux mouches SA (represented by: G. Barbaut, avocat)

Other parties to the proceedings: Office for Harmonization in the Internal Market (trade marks and designs), (represented by: A. Folliard-Monguiral, acting as Agent), Jean-Noël Castanet (represented by: J.-P. Sulzer, lawyer)

Re:

Appeal against the judgment of the Court of First Instance (Seventh Chamber) of 10 December 2008 in Case T-365/06 Bateaux mouches v OHMI by which the Court dismissed the action brought by the applicant against the decision of the First Board of Appeal of OHIM of 7 September 2006, concerning proceedings for invalidity of the Community word mark 'BATEAUX MOUCHES' — Infringement of Article 7(1)(b) and (3) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1) — Misinterpretation of the criteria laid down by the case-law of the Court of Justice — Absence of any distinctive character

Operative part of the order

The Court:

1. *Dismisses the appeal.*

2. *Orders the Compagnie des bateaux mouches SA to pay the costs.*

[1] OJ C 102 of 01.05.2009

Order of the Court of 20 November 2009 (reference for a preliminary ruling from the Tribunal de grande instance de Paris — France) — Olivier Martinez, Robert Martinez v Société MGN LIMITED

(Case C-278/09) [1]

(Regulation (EC) No 44/2001 — Jurisdiction in civil and commercial matters — National Court not eligible to refer questions to the Court of Justice for preliminary ruling for the purposes of Article 68(1) EC — Court's lack of jurisdiction)

(2010/C 24/30)

Language of the case: French

Referring court

Tribunal de grande instance de Paris

Parties to the main proceedings

Applicant: Olivier Martinez, Robert Martinez

Defendant: Société MGN LIMITED

Re:

Reference for a preliminary ruling — Tribunal de grande instance de Paris — Interpretation of Articles 2 and 5(3) of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ L 12 of 16.1.2001, p. 1) — Competent jurisdiction for the resolution of an action for infringement of privacy and the right of personal portrayal, following the placing online of information and photographs on an internet site disseminated from a server housed in the territory of a Member State other than that in which the plaintiff is domiciled — Determination of the place where the event which gave rise to the damage occurred — Relevance, in order to determine the place, of the number of connections to the internet page at issue effected from the Member State in which the plaintiff is domiciled, the nationality of the plaintiff and, where appropriate, the language in which the information was disseminated

Operative part

The Court of Justice of the European Communities has no jurisdiction to answer the question referred by the Tribunal de grande instance de Paris in Case C 278/09.

[1] JO C 220 of 12.09.2009

Reference for a preliminary ruling from the Nejvyšší správní soud (Czech Republic) lodged on 16 October 2009 — Marie Landtová v Česká správa sociálního zabezbečení

(Case C-399/09)

(2010/C 24/31)

Language of the case: Czech

Referring court

Nejvyšší správní soud

Parties to the main proceedings

Applicant: Marie Landtová

Defendant: Česká správa sociálního zabezbečení

Questions referred

1. Must point 6 in Part A of Annex III in connection with Article 7(2)(c) of Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, ([1]) according to which the criterion for determining the successor state competent to take into account the insurance period completed by employed persons up to 31 December 1992 in the social security system of the former Czech and Slovak Federal Republic is to remain applicable, be interpreted as precluding the application of a rule of national law according to which a Czech social security institution is to take into account fully, with regard to the entitlement to a benefit and the fixing of the amount thereof, the insurance period completed in the territory of the former Czech and Slovak Federal Republic up to 31 December 1992, even though, according to the above mentioned criterion, it is a social security institution of the Slovak Republic which is competent to take it into account?

2. If the first question is answered in the negative, must Article 12 of the Treaty establishing the European Community in conjunction with Articles 3(1), 10 and 46 of the Council Regulation (EEC) No 1408/71 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community be interpreted as precluding that the insurance period completed in the social security system of the former Czech and Slovak Federal Republic up to 31 December 1992, which has already been taken into account once to the same extent for benefit purposes in the social security system of the Slovak Republic, be, pursuant to the above mentioned national rule, taken fully into account, with regard to the entitlement to old age benefit and the fixing of the amount thereof, only in respect of nationals of the Czech Republic resident in its territory?

([1]) OJ, English Special Edition 1971 (II), p. 416.

Reference for a preliminary ruling from the Tribunalul Sibiu (Romania) lodged on 16 October 2009 — Ioan Tatu v Romanian State represented by the Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului

(Case C-402/09)

(2010/C 24/32)

Language of the case: Romanian

Referring court

Tribunalul Sibiu

Parties to the main proceedings

Applicant: Ioan Tatu

Defendants: Romanian State, represented by the Ministerul Finanțelor și Economiei, Direcția Generală a Finanțelor Publice Sibiu, Administrația Finanțelor Publice Sibiu, Administrația Fondului pentru Mediu, Ministerul Mediului

Question referred

Are the provisions of OUG No 50/2008 [introducing a pollution tax for motor vehicles] ([1]), as subsequently amended (by OUG No 208/2008 ([2]) and OUG No 218/2008 ([3])), contrary to the provisions of Article 90 of the EC Treaty, and do they constitute a measure which is manifestly discriminatory?

([1]) OUG No 50/2008 introducing a pollution tax for motor vehicles, M.Of. No 237, 25.4.2008.

([2]) OUG No 208/2008 implementing certain measures concerning the pollution tax for motor vehicles, M. Of. No 825, 8.12.2008.

([3]) OUG No 836 amending the Ordonanța de urgență a Guvernului No 50/2008 on the introduction of the pollution tax for motor vehicles, M Of. No 836, 11.12.2008.

Reference for a preliminary ruling from the Sąd Najwyższy (Poland) lodged on 28 October 2009 — Polska Telefonia Cyfrowa sp. z o.o. v Prezes Urzędu Komunikacji Elektronicznej

(Case C-410/09)

(2010/C 24/33)

Language of the case: Polish

Referring court

Sąd Najwyższy

Parties to the main proceedings

Applicant: Polska Telefonia Cyfrowa sp. z o.o.

Defendant: Prezes Urzędu Komunikacji Elektronicznej

Question referred

Does Article 58 of the Act of Accession (OJ 2003 L 236, p. 33) allow reliance to be placed against individuals in a Member State upon European Commission guidelines (OJ 2002 C 165, p. 6) of which, under Article 16(1) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33), the national regulatory authority should take the utmost account when carrying out an analysis of the relevant markets, where those guidelines have not been published in the *Official Journal of the European Union* in the language of that State and that language is an official language of the European Union?

Reference for a preliminary ruling from the Landesgericht für Zivilrechtssachen Wien (Austria) lodged on 28 October 2009 — Humanplasma GmbH v Republic of Austria

(Case C-421/09)

(2010/C 24/34)

Language of the case: German

Referring court

Landesgericht für Zivilrechtssachen Wien

Parties to the main proceedings

Applicant: Humanplasma GmbH

Defendant: Republic of Austria

Question referred

Does Article 28 (in conjunction with Article 30) EC preclude the application of a national provision under which the importation of erythrocyte concentrates from Germany is permitted only where the blood was donated without any payment having been made (not even coverage of expenses), that being a condition which is also applicable to the obtaining of erythrocyte concentrates within Austria?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 28 October 2009 — Vasiliki Stylianou Vandorou v Ipourgos Ethnikis Pedias kai Thriskevmaton

(Case C-422/09)

(2010/C 24/35)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Vasiliki Stylianou Vandorou

Defendant: Ipourgos Ethnikis Pedias kai Thriskevmaton

Question referred

For the purposes of Article 4(1)(b) of Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Article 1(3) of Directive 2001/19/EC (OJ 2001 L 206, p. 1), and prior to its repeal pursuant to Article 62 of Directive 2005/36/EC (OJ 2005 L 255, p. 22), does the 'professional experience' to be taken into account by the competent national authority, in order to determine whether the knowledge acquired by the person concerned by reason of such experience is such that it fully or partly covers the substantial differences between the matters covered by the education and training received by the person concerned in the Member State of origin and those covered by the diploma required in the host Member State, include experience which exhibits the following cumulative characteristics:

(a) it was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin,

(b) it was acquired in the context of professional activities in the host Member State which, although not identical to the regulated profession the right to pursue which in the host Member State is the subject of the application filed by the person concerned in reliance on Directive 89/48/EEC (and which cannot, moreover, be lawfully pursued in the host Member State until such time as the said application has been accepted) are, in the essential view of the national authority responsible for ruling on the application, professional activities which appear to correlate with the above regulated profession, and

(c) it is found, during the material appraisal by the aforementioned national authority, owing to the above correlation, to be such that it covers at least some of the substantial differences between the matters covered by the education and training received by the person concerned in the Member State of origin and the matters covered by the corresponding diploma in the host Member State?

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 29 October 2009 — Staatssecretaris van Financiën v X

(Case C-423/09)

(2010/C 24/36)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Staatssecretaris van Financiën

Respondent: X

Question referred

What criteria are to be applied in order to determine whether vegetables (garlic bulbs) which have been dried to some degree, but from which not all, or not almost all, of the moisture has been removed, and which are imported in a chilled state, are to be classified under tariff subheading 0703 20 00 of the CN or under tariff subheading 0712 90 90 of the CN?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 28 October 2009 — Christina Ioanni Toki v Ipourgos Ethnikis Pedias kai Thriskevmaton

(Case C-424/09)

(2010/C 24/37)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Christina Toki

Defendant: Ipourgos Ethnikis Pedias kai Thriskevmaton

Questions referred

1. For the purposes of Article 3(b) of Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), prior its repeal pursuant to Article 62 of Directive 2005/36/EC (OJ 2005 L 255, p. 22), does the recognition mechanism provided for therein apply to cases in which, in the Member State of origin, the profession in question is regulated within the meaning of the second subparagraph of Article 1(d) of the directive, but the person concerned is not a full member of an association or organisation which fulfils the conditions of that paragraph?

2. For the purposes of Article 3(b) of Directive 89/48/EEC does pursuit of a profession full-time in the Member State of origin mean pursuit in a self-employed or employed capacity of the actual profession authorisation to pursue which is being sought in the host Member State in reliance on Directive 89/48/EEC, or may it also cover employment on research work in an academic field related to the profession in an establishment that is in principle not for profit?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 28 October 2009 — Vasilios Alexandrou Giankoulis v Ipourgos Ethnikis Pedias kai Thriskevmaton

(Case C-425/09)

(2010/C 24/38)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Vasilios Alexandrou Giankoulis

Defendant: Ipourgos Ethnikis Pedias kai Thriskevmaton

Question referred

Does the term 'professional experience' in Article 4(1)(b) of Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Article 1(3) of Directive 2001/19/EC (OJ 2001 L 206, p. 1), and prior to its repeal pursuant to Article 62 of Directive 2005/36/EC (OJ 2005 L 255, p. 22), correspond to the term 'professional experience' defined in Article 1(e) of that Directive and can it be understood to include experience which exhibits the following cumulative characteristics:

(a) it was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin;

(b) it was acquired in the context of the exercise of the profession which is the subject of an application filed in reliance in reliance on Directive 89/48/EEC (see the terms 'the profession concerned', 'la profession concernée', 'der betreffende Beruf' used in the English, French and German versions of the Directive respectively) and

(c) it was acquired during the lawful pursuit of the professional activity, that is to say, under the terms and conditions of the relevant legislation of the Member State in which it was acquired, thereby excluding experience acquired in the profession concerned in the host Member State before the application was accepted, because the profession concerned cannot be lawfully pursued in the host Member State before the application is accepted (subject of course to Article 5 of the Directive, which allows the applicant, subject to conditions, in order to undergo professional education and training not undergone in the Member State of origin, to pursue the profession in the host Member State with the assistance of a qualified member of the profession)?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 28 October 2009 — Ioannis Georgiou Askoxilakis v Ipourgos Ethnikis Pedias kai Thriskevmaton

(Case C-426/09)

(2010/C 24/39)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Applicant: Ioannis Georgiou Askoxilakis

Defendant: Ipourgos Ethnikis Pedias kai Thriskevmaton

Question referred

Does the term 'professional experience' in Article 4(1)(b) of Directive 89/48/EEC on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16), as amended by Article 1(3) of Directive 2001/19/EC (OJ 2001 L 206, p. 1), and prior to its repeal pursuant to Article 62 of Directive 2005/36/EC (OJ 2005 L 255, p. 22), correspond to the term 'professional experience' defined in Article 1(e) of that Directive and can it be understood to include experience which exhibits the following cumulative characteristics:

(a) it was acquired by the person concerned after obtaining a diploma granting access to a specific regulated profession in the Member State of origin;

(b) it was acquired in the context of the exercise of the profession which is the subject of an application filed in reliance in reliance on Directive 89/48/EEC (see the terms 'the profession concerned', 'la profession concernée', 'der betreffende Beruf' used in the English, French and German versions of the Directive respectively) and

(c) it was acquired during the lawful pursuit of the professional activity, that is to say, under the terms and conditions of the relevant legislation of the Member State in which it was acquired, thereby excluding experience acquired in the profession concerned in the host Member State before the application was accepted, because the profession concerned cannot be lawfully pursued in the host Member State before the application is accepted (subject of course to Article 5 of the Directive, which allows the applicant, subject to conditions, in order to undergo professional education and training not undergone in the Member State of origin, to pursue the profession in the host Member State with the assistance of a qualified member of the profession)?

Reference for a preliminary ruling from the Conseil d'Etat (France) lodged on 29 October 2009 — Union Syndicale 'Solidaires Isère' v Premier ministre, Ministre du travail, des relations sociales, de la famille, de la solidarité et de la ville, Ministre de la santé et des sports

(Case C-428/09)

(2010/C 24/40)

Language of the case: French

Referring court

Conseil d'Etat

Parties to the main proceedings

Applicant: Union Syndicale 'Solidaires Isère'

Defendants: Premier ministre, Ministre du travail, des relations sociales, de la famille, de la solidarité et de la ville, Ministre de la santé et des sports

Questions referred

1. Does Directive 2003/88/EC [1] apply to occasional or seasonal staff carrying out a maximum of 80 days of work a year in holiday and leisure activity centres?

2. If this question is answered in the affirmative:

   (a) In view of the purpose of the Directive which, as set out in Article 1(1) thereof, is to lay down minimum safety and health requirements for the organisation of working time, must Article 17 thereof be interpreted as allowing:

   — under Article 17(1), the occasional or seasonal activity of persons with educational commitment contracts to be regarded as an activity for which 'on account of the specific characteristics of the activity concerned, the duration of the working time is not measured and/or predetermined or can be determined by the workers themselves', or

— under Article 17(3)(b), the occasional or seasonal activity of persons with educational commitment contracts to be regarded as 'security and surveillance activities requiring a permanent presence in order to protect property and persons'?

(b) in the latter case, should the conditions laid down in Article 17(2), in terms of 'equivalent periods of compensatory rest' or 'appropriate protection' to be afforded to the workers concerned, be regarded as being satisfied by a rule restricting the activity of a person with the contracts in question to 80 days of work a year in holiday and leisure activity centres?

(1) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, p. 9).

Reference for a preliminary ruling from the Verwaltungsgericht Halle (Germany) lodged on 30 October 2009 — Günter Fuß v Stadt Halle (Saale)

(Case C-429/09)

(2010/C 24/41)

Language of the case: German

Referring court

Verwaltungsgericht Halle

Parties to the main proceedings

Applicant: Günter Fuß

Defendant: Stadt Halle (Saale)

Questions referred

1. Do secondary claims result from Directive 2003/88/EC (1) of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time, where an (official) employer has determined a working time which exceeds the limit laid down in Article 6(b) of Directive 2003/88/EC?

2. In the event that the first question is to be answered in the affirmative, does the claim result from an infringement of Directive 2003/88/EC alone, or does Community law establish further requirements for the claim, for example, an application to the employer for a reduction in working time, or fault in determining the working time?

3. In the event that a secondary claim exists, the question then arises whether the remedy should be time off in lieu or financial compensation, and what requirements exist under Community law for calculating the level of the claim?

4. Are the reference periods laid down in Article 16(b) and/or the second paragraph of Article 19 of Directive 2003/88/EC directly applicable in a case such as the present one, in which national law merely determines a working time which exceeds the maximum working time laid down in Article 6(b) of Directive 2003/88/EC, without providing for compensation? Should direct applicability be affirmed, the question then arises whether, and if necessary how, the compensation should be effected, if the employer does not grant compensation by the end of the reference period?

5. How must questions one to four be answered during the period when Council Directive 93/104/EC (2) of 23 November 1993 was in force?

(1) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299 p. 9).
(2) Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307 p. 18).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 2 November 2009 — Euro Tyre Holding B.V. v Staatssecretaris van Financiën

(Case C-430/09)

(2010/C 24/42)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Euro Tyre Holding B.V.

Defendant: Staatssecretaris van Financiën

Question referred

In the light of Article 28c(A)(a) of the Sixth Directive, (1) and of Article 8(1)(a) and (b), the first subparagraph of Article 28a(1)(a), and the first subparagraph of Article 28b(A)(a) of the Sixth Directive, where, with regard to the same goods, two successive supplies are effected between taxable persons acting as such, in respect of which there is one single intra-Community dispatch or one single intra-Community transport,

how should one determine to which supply the intra-Community transport should be ascribed, when the transport of the goods is effected by or at the expense of the person who acts both in the capacity of purchaser for the first supply and in the capacity of vendor in the second supply?

(1) Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.
(OJ 1997 L 145, p. 1).

Reference for a preliminary ruling from the Hof van Beroep te Brussel (Belgium), lodged on 2 November 2009 — Airfield NV and Canal Digitaal BV v Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam)

(Case C-431/09)

(2010/C 24/43)

Language of the case: Dutch

Referring court

Hof van Beroep te Brussel

Parties to the main proceedings

Appellants: Airfield NV and Canal Digitaal BV

Respondent: Belgische Vereniging van Auteurs, Componisten en Uitgevers CVBA (Sabam)

Questions referred

1. Does Directive 93/83 (1) preclude the requirement that a supplier of digital satellite television must obtain the consent of the copyright holders in the case where a broadcasting organisation transmits its programme-carrying signals, either by a fixed link or by an encrypted satellite signal, to a supplier of digital satellite television which is independent of the broadcasting organisation, and that supplier has those signals encrypted and beamed to a satellite by a company associated with it, after which those signals are beamed down, with the consent of the broadcasting organisation, as part of a package of television programmes and therefore bundled, to the satellite television supplier's subscribers, who are able to view the programmes simultaneously and unaltered by means of a decryption card or smart card provided by the satellite television supplier?

2. Does Directive 93/83 preclude the requirement that a supplier of digital satellite television must obtain the consent of the copyright holders in the case where a broadcasting organisation transmits its programme-carrying signals to a satellite in accordance with the instructions of a digital television supplier which is independent of the broadcasting organisation, after which those signals are beamed down, with the consent of the broadcasting organisation, as part of a package of television programmes and therefore bundled, to the satellite television supplier's subscribers, who are able to view the programmes simultaneously and unaltered by means of a decryption card or smart card provided by the satellite television supplier?

(1) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

Reference for a preliminary ruling from the Hof van Beroep te Brussel (Belgium), lodged on 2 November 2009 — Airfield NV v Agicoa Belgium BVBA

(Case C-432/09)

(2010/C 24/44)

Language of the case: Dutch

Referring court

Hof van Beroep te Brussel

Parties to the main proceedings

Appellant: Airfield NV

Respondent: Agicoa Belgium BVBA

Questions referred

1. Does Directive 93/83 (1) preclude the requirement that a supplier of digital satellite television must obtain the consent of the copyright holders in the case where a broadcasting organisation transmits its programme-carrying signals, either by a fixed link or by an encrypted satellite signal, to a supplier of digital satellite television which is independent of the broadcasting organisation, and that supplier has those signals encrypted and beamed to a satellite by a company associated with it, after which those signals are beamed down, with the consent of the broadcasting organisation, as part of a package of television programmes and therefore bundled, to the satellite television supplier's subscribers, who are able to view the programmes simultaneously and unaltered by means of a decryption card or smart card provided by the satellite television supplier?

2. Does Directive 93/83 preclude the requirement that a supplier of digital satellite television must obtain the consent of the copyright holders in the case where a broadcasting organisation transmits its programme-carrying signals to a satellite in accordance with the instructions of a digital television supplier which is independent of the broadcasting organisation, after which those signals are beamed down, with the consent of the broadcasting organisation, as part of a package of television programmes and therefore bundled, to the satellite television supplier's subscribers, who are able to view the programmes simultaneously and unaltered by means of a decryption card or smart card provided by the satellite television supplier?

(1) Council Directive 93/83/EEC of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission (OJ 1993 L 248, p. 15).

Action brought on 4 November 2009 — Commission of the European Communities v Republic of Austria

(Case C-433/09)

(2010/C 24/45)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou, acting as Agent)

Defendant: Republic of Austria

Form of order sought

— Declare that, by including the standard fuel consumption tax in the basis of assessment of the value added tax imposed in Austria on the delivery of a motor vehicle, the Republic of Austria did not comply with its obligations under Articles 78 and 79 of Directive 2006/112/EC (1);

— order Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission complains of the inclusion of the standard fuel consumption tax (SFCT) in the basis of assessment of the value added tax imposed by the Republic of Austria on the delivery of a motor vehicle in the Republic of Austria.

The standard fuel consumption tax essentially consists of a single registration tax, as its main feature is the registration of motor vehicles in the Republic of Austria. Consequently, the case-law of the Court of Justice in Case C-98/05 (2), according to which such a tax is not to be included in the basis of assessment of value added tax, is applicable to the present case.

(1) Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1).
(2) Case C-98/*05 De Danske Bilimportører* [2006] ECR I-4945.

Action brought on 4 November 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-435/09)

(2010/C 24/46)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek, J.-B. Laignelot and C.A.H.M. ten Dam, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

1. declare that, by failing to adopt the measures necessary to transpose correctly and fully,

as regards the Flemish Region: Article 4(2) and (3), in conjunction with Annexes II and III,

as regards the Walloon Region: Article 4(1), in conjunction with Annex I, point 8(a) and point 18(a), and Article 7(1)(b), and

as regards the Brussels-Capital Region: Article 4(2) and (3), in conjunction with Annexes II and III and Annex III as such,

of Council Directive 85/337/EEC (1) of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997,

Belgium has failed to fulfil its obligations under that directive.

2. order Belgium to pay the costs.

Pleas in law and main arguments

The Commission relies on the following grounds in support of its action:

(a) As regards the legislation of the Flemish Region, the Commission states that that legislation does not take account of all the relevant criteria of Annex III to the Directive when determining whether or not it is necessary to make the projects listed in Annex II to the Directive subject to an environmental impact assessment, in accordance with Articles 5 to 10 of the Directive. The Flemish Government has failed to show that the alternative procedures to which it refers for the projects in question satisfy the requirements of Articles 2 and 5 to 10 of the Directive.

(b) As regards the legislation of the Walloon Region, the Commission first states that in respect of the projects listed in point 18(a) of Annex I (industrial plants for the production of pulp from timber or similar fibrous materials), that legislation sets a threshold, whereas the Directive does not provide for this, and in respect of the projects listed in point 8(a) of Annex I (ports for inland-waterway traffic) sets a threshold which is expressed in terms of the number of ships and not in tonnes, as the Directive does. Second, the Commission states that Article 7(1)(b) of the Directive has not been correctly transposed in the legislation of the Walloon Region.

(c) As regards the legislation of the Brussels-Capital Region, the Commission states first that it takes no account of the relevant selection criteria of Annex III to the Directive in its transposition of Article 4(3) of the Directive and that the alternative forms of assessment referred to by the Brussels Government do not satisfy all the characteristics listed in the Directive. The Commission states second that in that legislation Annex III to the Directive is not transposed as such.

([1]) OJ 1985 L 175, p. 40.

Reference for a preliminary ruling from the Bundes verwaltungsgericht (Germany) lodged on 9 November 2009 — Attila Belkiran v Lord Mayor of Krefeld — Other party to the proceedings: The representative for federal interests at the Bundesverwaltungsgericht

(Case C-436/09)

(2010/C 24/47)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Attila Belkiran

Defendant: Lord Mayor of Krefeld

Other party to the proceedings: The representative for federal interests at the Bundesverwaltungsgericht

Question referred

Is the protection against expulsion provided for in Article 14(1) of Decision No 1/80 (of the EEC-Turkey Association Council) and enjoyed by a Turkish national, whose legal status derives from Article 7 of Decision No 1/80 and who has resided for the previous ten years in the Member State in respect of which this legal status applies, to be determined in accordance with Article 28(3)(a) of Directive 2004/38/EC ([1]), with the result that expulsion is permitted only on imperative grounds of public security, as defined by Member States?

([1]) Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77)

Reference for a preliminary ruling from the Tribunal de Grande Instance de Périgueux (France) lodged on 9 November 2009 — AG2R Prévoyance v Beaudout Père et Fils SARL

(Case C-437/09)

(2010/C 24/48)

Language of the case: French

Referring court

Tribunal de Grande Instance de Périgueux

Parties to the main proceedings

Applicant: AG2R Prévoyance

Defendant: Beaudout Père et Fils SARL

Question referred

Are a provision making affiliation to a supplementary healthcare scheme compulsory, as provided for under Article L 912-1 of the Social Security Code, and the addendum, made compulsory by the public authorities at the request of organisations representing employers and workers in a given sector, which provides for affiliation to a single body, designated

to manage a supplementary healthcare scheme, without any possibility for undertakings in that sector to be granted a waiver of the affiliation obligation, in compliance with Articles 81 EC and 82 EC, or are they such as to place the designated body in a dominant position constituting an abuse?

Reference for a preliminary ruling from the Cour d'appel de Paris (France) lodged on 10 November 2009 — Pierre Fabre Dermo-Cosmétique SAS v Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

(Case C-439/09)

(2010/C 24/49)

Language of the case: French

Referring court

Cour d'appel de Paris

Parties to the main proceedings

Applicant: Pierre Fabre Dermo-Cosmétique SAS

Defendants: Président de l'Autorité de la Concurrence, Ministre de l'Economie de l'Industrie et de l'Emploi

Question referred

Does a general and absolute ban on selling contract goods to end users via the Internet, imposed on authorised distributors in the context of a selective distribution network, in fact constitute a 'hardcore' restriction of competition by object for the purposes of Article 81(1) EC which is not covered by the block exemption provided for by Regulation No 2790/1999 [1] but which is potentially eligible for an individual exemption under Article 81(3) EC?

[1] Commission Regulation (EC) No 2790/1999 of 22 December 1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices (OJ 1999 L 336 p. 21)

Action brought on 11 November 2009 — Commission of the European Communities v Republic of Austria

(Case C-441/09)

(2010/C 24/50)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and B.-R. Killmann, Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by applying a reduced rate of value added tax (VAT) to the supply, importation and intra-Community acquisitions of certain live animals, in particular horses, not intended for use in the preparation of foodstuffs for human or animal consumption, the Republic of Austria has failed to fulfil its obligations under Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system [1];

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The Commission is of the opinion that Austrian law on VAT infringes Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system, by also applying a reduced rate of VAT to the supply of certain live animals (in particular horses), where those animals are not intended for the production of foodstuffs.

The expression 'live animals' in point 1 of Annex III to the Directive on the VAT system is not a separate category but encompasses only those animals which are normally used as foodstuffs for human or animal consumption. That interpretation is supported by the Spanish, French, English, Italian, Dutch, Portuguese and Swedish versions of that provision. In addition the fact that that provision is an exception requires according to settled case-law that it be interpreted strictly.

Particularly animals of the family of equids are clearly used principally as pack or riding animals (and not as foodstuffs for human or animal consumption).

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

Reference for a preliminary ruling from the Bayerischer Verwaltungsgerichtshof (Germany) lodged on 13 November 2009 — Karl Heinz Bablok, Stefan Egeter, Josef Stegmeier, Karlhans Müller, Barbara Klimesch v Freistaat Bayern — Intervening parties: Monsanto Technology Llc., Monsanto Agrar Deutschland GmbH, Monsanto Europa S.A./N.V.

(Case C-442/09)

(2010/C 24/51)

Language of the case: German

Referring court

Bayerischer Verwaltungsgerichtshof

Parties to the main proceedings

Applicants: Karl Heinz Bablok, Stefan Egeter, Josef Stegmeier, Karlhans Müller, Barbara Klimesch

Defendant: Freistaat Bayern

Intervening parties: Mansanto Technology Llc., Monsanto Agrar Deutschland GmbH, Monsanto Europe SA/NV

Questions referred

1. Must the term 'genetically modified organism' or 'GMO' defined in point 5 of Article 2 of Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed [1] be interpreted as meaning that it includes also material from genetically modified plants (in this case, pollen from the genetically modified MON 810 strain of maize) which although containing genetically modified DNA and genetically modified proteins (in this case, Bt toxin) at the time of entering a food (in this case, honey) or designation for use as a food/food supplement does not possess (or no longer possesses) a specific and individual capacity to reproduce?

2. If Question 1 is answered in the negative:

   (a) Does it suffice, at any rate for foods which within the meaning of point 10 of Article 2 of Regulation (EC) No 1829/2003 are deemed to be 'produced from GMOs', that the food contains material from genetically modified plants which previously possessed a specific and individual capacity to reproduce?

   (b) If that is answered in the affirmative:

   Must the term 'produced from GMOs' within the meaning of point 10 of Article 2 and Article 3(1)(c) of Regulation (EC) No 1829/2003 be interpreted as meaning that in relation to GMOs no deliberate and targeted production process is required and the unintentional and adventitious contamination of food (in this case, honey or pollen as a food supplement) by (former) GMOs is also covered?

3. If either Question 1 or Question 2 is answered in the affirmative:

   Must Article 3(1) and Article 4(2) of Regulation (EC) No 1829/2003 be interpreted as meaning that any contamination of food of animal origin, such as honey, through genetically modified material lawfully present in the environment triggers the obligation for such to be authorised and supervised or can thresholds applicable elsewhere (for example, under Article 12(2) of the Regulation) apply *mutatis mutandis*?

[1] OJ 2003 L 268, p. 1

Reference for a preliminary ruling from the Juzgado Contencioso Administrativo nº 3 de La Coruna (Spain) lodged on 16 November 2009 — Rosa María Gaviero Gaviero v Consellería de Educación e Ordenación Universitaria

(Case C-444/09)

(2010/C 24/52)

Language of the case: Spanish

Referring court

Juzgado Contencioso Administrativo No 3 of La Coruna

Parties to the main proceedings

Applicant: Rosa María Gaviero Gaviero

Defendant: Consellería de Educación e Ordenación Universitaria (Galicia)

Question referred

What is the meaning of the phrase 'different length-of service qualifications' in Clause 4(4) of the Framework agreement in the Annex to Directive 1999/70/EC [1], and is the mere fact of the temporary nature of the employment relationship of those serving as public employees an 'objective ground' which may justify a difference in treatment as regards receipt of the length of service increment?

[1] Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP (OJ L 175, 10.7.1999)

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven lodged on 16 November 2009 — 1. IMC Securities BV, 2. Stichting Autoriteit Financiële Markten

(Case C-445/09)

(2010/C 24/53)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: 1. IMC Securities BV 2. Stichting Autoriteit Financiële Markten

Question referred

Must the second indent of Article 1(2)(a) of the Market Abuse Directive [1] be interpreted as meaning that the bringing about of price changes in a time span such as that at issue through the commission of a combination of acts with a financial instrument, namely transactions and orders to trade as described …, should be regarded as the 'securing' of such an instrument at an abnormal or artificial level?

[1] Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ 2003 L 96, p. 16)

Reference for a preliminary ruling from the Rechtbank van eerste aanleg te Antwerpen (Belgium), lodged on 17 November 2009 — Koninklijke Philips Electronics NV v Lucheng Meijing Industrial Company Ltd and Others

(Case C-446/09)

(2010/C 24/54)

Language of the case: Dutch

Referring court

Rechtbank van eerste aanleg te Antwerpen

Parties to the main proceedings

Claimant: Koninklijke Philips Electronics NV

Defendants: Lucheng Meijing Industrial Company Ltd and Others

Question referred

Does Article 6(2)(b) of Regulation (EC) No 3295/94 [1] of 22 December 1994 (the old Customs Regulation) constitute a uniform rule of Community law which must be taken into account by the court of the Member State which, in accordance with Article 7 of the Regulation, has been approached by the holder of an intellectual-property right, and does that rule imply that, in making its decision, the court may not take into account the temporary storage status/transit status and must apply the fiction that the goods were manufactured in that same Member State, and must then decide, by applying the law of that Member State, whether those goods infringe the intellectual-property right in question?

[1] Council Regulation (EC) No 3295/94 of 22 December 1994 laying down measures to prohibit the release for free circulation, export, re-export or entry for a suspensive procedure of counterfeit and pirated goods (OJ 1994 L 341, p. 8).

Reference for a preliminary ruling from the Bundesarbeitsgericht (Germany), lodged on 18 November 2009 — Reinhard Prigge, Michael Fromm and Volker Lambach v Deutsche Lufthansa AG

(Case C-447/09)

(2010/C 24/55)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Appellants: Reinhard Prigge, Michael Fromm and Volker Lambach

Respondent: Deutsche Lufthansa AG

Question referred

Must Article 2(5), Article 4(1) and/or Article 6(1), first sentence, of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [1] and/or the general Community-law principle

which prohibits discrimination on grounds of age be interpreted as precluding rules of national law which recognise an age-limit of 60 for pilots established by collective agreement for the purposes of ensuring air safety?

(1) OJ 2000 L 303, p. 16.

Appeal brought on 18 November 2009 by Royal Appliance International GmbH against the judgment of the Court of First Instance (First Chamber) delivered on 15 September 2009 in Case T-446/07 Royal Appliance International GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs); the other party to the proceedings being BSH Bosch and Siemens Hausgeräte GmbH

(Case C-448/09 P)

(2010/C 24/56)

Language of the case: German

Parties

Appellant: Royal Appliance International GmbH (represented by: K.-J. Michaeli, Rechtsanwalt, M. Schork, Rechtsanwältin)

Other parties to the proceedings:

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

— BSH Bosch and Siemens Hausgeräte GmbH

Form of order sought

— Set aside the judgment of the Court of First Instance of 15 September 2009 in Case T-446/07;

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 3 October 2007 in Case R 572/2006-4;

— Order the Office for Harmonisation in the Internal Market and BSH Bosch and Siemens Hausgeräte GmbH to bear their own costs and to pay the appellant's costs both at first instance and in the appeal proceedings.

Pleas in law and main arguments

The appeal is brought against the judgment of the Court of First Instance by which the decision of the Board of Appeal of the Office for Harmonisation in the Internal Market of 3 October 2007 was confirmed. The Court of First Instance and the Board of Appeal are of the opinion that there is a likelihood of confusion between the German mark cited in opposition 'sensixx' ('the opposing mark') and the mark applied for 'Centrixx' in relation to the product 'vacuum cleaner'. The day after the Board of Appeal's decision and before the Court hearing began, the opposing mark was revoked with final and binding effect with regard to the product 'vacuum cleaner'. The Court of First Instance rejected the request which was initially submitted to stay proceedings and treated the revocation of the opposing mark as legally irrelevant, since it is not part of the factual or legal context of the dispute which was before the Board of Appeal, and was therefore also not to be taken into account by the Court of First Instance.

The appellant is of the opinion that the Court of First Instance disregarded the legal conditions applicable to the stay of proceedings under Article 77 of its Rules of Procedure, by not taking the revocation of the opposing mark into account. The change in the factual basis which is decisive for the dispute in this case concerns the validity of the opposing mark, over which the appellant has no influence. That change defeats the ground of opposition to the trade mark registration and there was an obligation to take it into account. That is clear from the appellant's right to property, which comprises the registration of the trade mark. As a result of its refusal to take into account the pending decision of the Oberlandesgericht (Higher Regional Court) Munich with regard to the opposing mark, the Court of First Instance assessed the similarity of the lists of goods in relation to two marks, one of which had been almost completely revoked at the time of the decision. The Court thereby infringed Article 45 of the Community trade mark Regulation because there were no longer any third party rights in existence at the time of the decision of the Court of First Instance, since the revocation of the opposing mark was already largely established. The Courts of the European Communities have themselves allowed exceptions to the prohibition on the taking into account of new facts, by deciding that decisions of national courts can also be taken into account where they are brought to the attention of the court first in the proceedings before it. That must in particular be the case where the appellant has no influence on the timing of the decision of the Board of Appeal which, as in this case, was taken shortly before the expiry of the period during which there is no obligation to put the mark to use, since the timing of that decision falls within the discretion of the Board of Appeal alone. A decision on the registration of the mark taken on such an arbitrary basis is counter to the objective of Community trade mark law.

The appellant complains in addition about the erroneous application of Article 8(1)(b) of the Community trade mark Regulation. The assessment and reasoning of the Court of First Instance did not sufficiently comply with the required standard. It failed namely to take into account facts relevant to the goods at issue in the present case and their consequences for the consumer and thus used incorrect criteria of assessment regarding the degree of attention and the similarity of the goods. The Court of First Instance did not give equal weight to common features of and differences between the marks when assessing the similarities between them, and in particular, when assessing visual similarity, relied on irrelevant common features. It did not take into account the pronunciation by the relevant German public of the mark applied for and only reinforced the contradictory nature — complained of in the application — of the assessment of phonetic and conceptual similarity, by

affirming reliance on 'center' while rejecting an association with that concept. It disregarded basic principles of phonetic recognition by accepting that the word ending 'xx' had a particularly sonorous pronunciation and distorted the facts as set out in the appellant's application by imputing to the appellant a denial that either mark had a clear meaning. Finally, the Court of First Instance incorrectly assessed the conditions for a finding of the likelihood of confusion, by not examining the degree of attention of the public at the time of purchase, and therefore erred in law by agreeing that phonetic and visual perceptions of the mark should be given equal weight.

Appeal brought on 18 November 2009 by Pigasos Alieftiki Naftiki Etairia against the judgment of 16 September 2009 of the Court of First Instance (Seventh Chamber) in Case T-162/07 Pigasos Alieftiki Naftiki Etairia v Council of the European Union and Commission of the European Communities

(Case C-451/09 P)

(2010/C 24/57)

Language of the case: Greek

Parties

Appellant: Pigasos Alieftiki Naftiki Etairia (represented by: N. Skandamis and M. Perakis, lawyers)

Other parties to the proceedings: Council of the European Union and Commission of the European Communities

Form of order sought

The Court is asked to:

— uphold the appeal and set aside the judgment of the Court of First Instance of the European Communities (Seventh Chamber) of 16 September 2009 in Case T-162/07 on account of insufficient and unclear reasoning, misinterpretation of the legal concepts cited in the appeal and incorrect assessment on the part of the Court of First Instance of the evidence adduced before it;

— hold that the state of the proceedings permits it to give final judgment in the matter (first paragraph of Article 61 of the Statute of the Court) and to do so;

In the alternative

— refer the case back to the General Court of the European Union to decide the action for damages brought on 8 May 2007 against the Council of the European Union and the European Commission to compensate for the damage suffered by reason of unlawful acts and omissions of the above institutions, as described in the action;

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

Pleas in law and main arguments

By its appeal of 16 November 2009 Pegasos Alieftiki Naftiki Etairia is challenging the judgment of the Court of First Instance of 16 September 2009 in Case T-162/07, on the ground that the Court of First Instance infringed Community law by giving insufficient reasoning for its decision, misinterpretation of legal concepts and mistaken assessment of the evidence adduced.

In particular:

1. The Court of First Instance held that the rules in Regulation No 2454/93 on the exclusive use of Document T2M as proof of the Community nature of products of sea-fishing caught in international waters and transported through a third country were necessary and proportionate. According to the appellant, the Court did not address all its pleas and arguments, in particular concerning the possibility that the Community legislature should provide for alternative means of proof, especially in view of the inappropriate nature of the measure as regards securing trade. In addition, the Court of First Instance did not give sufficient reasons for its conclusion as to the necessity and proportionality of the Community rules, and misinterpreted the nature of Customs Document T2M as giving entitlement to free movement.

2. According to the appellant, the Court of First Instance did not assess correctly the evidence which it submitted, with the consequence that it held that the content of the documents issued by the Tunisian customs authorities to Pigasos was not equivalent to box 13 of Document T2M. However, it is clear from the documents submitted as a whole that the Tunisian customs authorities kept the products of sea-fishing under the same continuous supervision as that prescribed by Document T2M. On the basis of the Tunisian authorities' documents, it is confirmed that the products of sea-fishing were in Tunisian territory under the transit regime, which means under domestic law that a product is kept under continuous supervision by the customs authorities, which is also what is required to be attested to in box 13 of Document T2M.

3. The Court of First Instance also found that Pigasos did not show the diligence required in its business activities in Tunisia, which led the Court, according to the appellant, to misinterpret that concept in law and extend the care and attention required of a businessman to generalised suspicion of the conduct of executive bodies of third countries, on the sole ground that they are not bound by Community law.

For the above reasons the appellant asks the Court of Justice of the European Communities to set aside the judgment of the Court of First Instance in Case T-162/07 and to give judgment on the case itself or, in the alternative, to refer the case back to the General Court for judgment.

Reference for a preliminary ruling from the Corte di Appello di Firenze (Italy) lodged on 18 November 2009 — Tonina Enza Iaia, Andrea Moggio, Ugo Vassalle v Ministero dell'Istruzione dell'Università e della Ricerca, Ministero dell'Economia e delle Finanze, Università di Pisa

(Case C-452/09)

(2010/C 24/58)

Language of the case: Italian

Referring court

Corte di Appello di Firenze

Parties to the main proceedings

Applicants: Tonina Enza Iaia, Andrea Moggio, Ugo Vassalle

Defendants: Ministero dell'Istruzione dell'Università e della Ricerca, Ministero dell'Economia e delle Finanze, Università di Pisa

Questions referred

1. Is it compatible with Community law that the Italian State may, in relation to the period preceding the adoption of the first national legislation implementing Directive 82/76/EEC, ([1]) lawfully rely on five-year limitation or ten-year ordinary limitation, in respect of a right arising under that directive? — without thereby definitively preventing that right, relating to pay/essential needs, from being exercised, or, failing which, an action for compensation/damages from being brought?

2. Is it compatible with Community law, on the other hand, that all preliminary objections of limitation be precluded because they definitively prevent the above right from being exercised?

3. In the alternative, is it compatible with Community law that all preliminary objections of limitation be precluded until such time as the Court of Justice confirms the infringement of Community law (in the present case, up until 1999)?

4. In the further alternative, is it compatible with Community law that all preliminary objections of limitation be precluded in any event until such time as the directive establishing the right has been correctly and fully transposed into national law (which, in the present case, never occurred), as laid down in the judgment in *Emmott*?

([1]) OJ L 43, 15.2.1982, p. 21.

Action brought on 19 November 2009 — Commission v Federal Republic of Germany

(Case C-453/09)

(2010/C 24/59)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafyllou and B.-R. Killmann, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, by applying a reduced rate of value added tax (VAT) to the supply, importation and intra-Community acquisitions of certain live animals, in particular horses, not intended for use in the preparation of foodstuffs for human or animal consumption, the Federal Republic of Germany has failed to fulfil its obligations under Article 96 and 98 in conjunction with Annex III of the Directive on the VAT system;

— order the Federal Republic of Germany to pay the costs.

Pleas in law and main arguments

The present action is directed against the reduced rate of VAT applied by the Federal Republic of Germany to the supply, importation and intra-Community acquisitions of live animals, in particular horses, even if they are not normally intended for use in the preparation of foodstuffs for human and animal

consumption. In the Commission's view, that is not compatible with the requirements of Directive 2006/112/EC ('Directive on the VAT system'), in particular regarding breeds of horses which are normally used as dressage horses, riding horses, circus horses or racehorses.

The Directive on the VAT system allows the Member States under certain conditions to apply reduced tax rates alongside the standard rate of VAT. For example a Member State may under Article 98(2) of the Directive on the VAT system apply a reduced rate of VAT 'to supplies … in the categories set out in Annex III'. As the reduced VAT rate must be regarded as an exception to the standard VAT rate, the provision must be interpreted and applied strictly.

The Commission is of the view that live animals — in particular horses — which are not normally intended for use as foodstuffs, do not fall under point 1 of Annex III. Consequently, the reduced VAT rate under Article 98(2) of the Directive on the VAT system cannot be applied to those animals. That is clear both from the scheme of the directive and from the various language versions of point 1 of Annex III of the directive. Nor does a purposive interpretation lead to a different result: this category (point 1) applies to the preferential treatment of all products intended for the production of foodstuffs for human or animal consumption.

The failure to distinguish between breeds of horses in the Combined Nomenclature is irrelevant in the present case, since customs law listings are based on different perspectives than VAT law. The fact that Article 98(3) of the Directive on the VAT system allows the Member States to refer to the Combined Nomenclature does not mean that a Member State may rely on a lack of precision in the Combined Nomenclature in order to justify the incorrect transposition of Community VAT law.

Transactions involving breeds of horses which are normally used as dressage horses, riding horses, circus horses or racehorses may also not be considered as the supply of goods of a kind normally intended for use in agricultural production, eligible for a reduced tax rate under point 11 of Annex III to the Directive on the VAT system. While horses are by nature agricultural animals, that does not mean that those breeds of horses are normally used in agricultural production. In fact, such breeds of horses are usually used for sporting, educational, leisure or entertainment purposes, thus precisely not in agricultural production.

Action brought on 19 November 2009 — Commission of the European Communities v Italian Republic

(Case C-454/09)

(2010/C 24/60)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Righini and B. Stromsky, agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to take, within the prescribed time-limits, all the measures necessary to withdraw the aid considered unlawful and incompatible with the common market by Commission Decision No 2008/697/EC [1] of 16 April 2008 on State Aid C 13/07 (ex NN 15/06 and N 734/06) implemented by Italy for New Interline (notified under document number C(2008) 1321 on 17 June 2008), the Italian Republic has failed to fulfil its obligations under Articles 2, 3 and 4 of that decision and the EC Treaty.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time limit within which Italy was required to withdraw and recover the unlawfully paid aid expired four months after the date of notification of the decision in question. More than a year later, the Italian authorities have yet to adopt the measures necessary to implement the decision and recover the aid.

[1] OJ 2008 L 235, p. 12.

Action brought on 20 November 2009 — Commission of the European Communities v Republic of Poland

(Case C-455/09)

(2010/C 24/61)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: S. Pardo Quintillán and Ł. Habiak, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not bringing into force the laws, regulations and administrative provisions necessary to give effect to Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, [1] and in any event by not informing the Commission of those measures, the Republic of Poland has failed to fulfil its obligations under Article 18 of that directive;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period within which Directive 2006/7/EC had to be transposed expired on 24 March 2008.

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[1] OJ 2006 L 64, p. 37.

Reference for a preliminary ruling from the Juzgado Contencioso Administrativo nº 3 de Pontevedra (Spain) lodged on 23 November 2009 — Ana María Iglesias Torres v Consejería de Educación de la Junta de Galicia

(Case C-456/09)

(2010/C 24/62)

Language of the case: Spanish

Referring court

Juzgado Contencioso Administrativo No 3 de Pontevedra

Parties to the main proceedings

Applicant: Ana María Iglesias Torres

Defendant: Consejería de Educación de la Junta de Galicia

Questions referred

1. Is Directive 1999/70/EC [1] applicable to interim staff of the Autonomous Community of Galicia?

2. Is it possible to regard Article 25(2) of Law 7/2007 as a national provision transposing Directive 1999/70/EC when there is no reference to Community legislation in that Law?

3. In the event that the reply to the second question is affirmative: must Article 25(2) EBEP be defined as a national provision transposing the directive, of the kind referred to in point 4 of the operative part of the judgment of the Court of Justice in Case C-268/06 (*Impact*), [2] or is the Spanish State required to give retroactive effect to remuneration arising from the three-yearly increments which it has recognised in accordance with the Directive?

4. In the event that the reply to the second question is negative: is it possible to apply Directive 1999/70/EC directly to the case in the terms set out in the judgment of the Court of Justice in *Del Cerro Alonso*? [3]

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[1] 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).

[2] Case C-268/06 *Impact* [2008] ECR I-2483.

[3] Case C-307/05 *Del Cerro Alonso* [2007] ECR I-7109.

Appeal brought on 20 November 2009 by the Italian Republic against the judgment delivered on 4 September 2009 in Case T-211/05 Italy v Commission

(Case C-458/09P)

(2010/C 24/63)

Language of the case: Italian

Parties

Appellant: Italian Republic (represented by: G. Palmieri, Agent)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellant claims that the Court should:

— allow the present appeal;

— set aside the judgment of 4 September 2009 in Case T-211/05 *Italy* v *Commission*, notified by registered letter No 405966 of 4 September 2009, received on 8 September 2009, and as a consequence annul Decision 2006/261/EC of 16 March 2005 (notified under document number C(2005) 591) on aid scheme C 8/2004 (ex NN 164/2003) implemented by Italy in favour of newly listed companies.

Pleas in law and main arguments

First plea in law: Infringement of Articles 10 and 13 of Regulation No 659/99 [1] ("Procedure regarding unlawful aid"), Article 88(2) EC and the principle of *audi alteram partem*. Manifest error of assessment of documents.

The Court of First Instance held that the letters of October and December 2003 from the Commission to Italy embodied a genuine preliminary discussion of the measures introduced by Decree Law 326/2003. The Court of First Instance did not regard those letters as consisting merely in general requests and in the negative assertion that the possibility could not be ruled out that the measures might entail State aid incompatible with the common market.

Second plea in law: Breach of the principle of *audi alteram partem*.

In the decision initiating the formal investigation, the Commission had taken the fact that the tax concessions provided for were not available to companies established outside Italy as an indication that the measures were selective. In the final decision, on the other hand, the Commission held that the measures were selective because the tax concessions mainly favoured Italian undertakings — since they applied to their worldwide taxable income — as compared with Community companies, which are taxed in Italy only on the taxable income generated in that Member State. The Commission never warned the Italian Government of that change of approach and did not enable it to submit observations in that regard. The Court of First Instance erred in holding that the conduct of the Commission was lawful.

Third plea in law: Infringement of Article 87(1) EC.

In any case, an advantage, such as the tax concession at issue, cannot be regarded as selective where it is available to all companies — whether Italian or Community — which meet the conditions for being listed on a regulated market of the European Union. The fact that Italian companies reap a greater benefit is a consequence of the tax system, which provides that taxation is to be based on the criterion of residence; however, when all companies are on an equal footing in relation to the tax measure in question, the mere fact that some benefit more than others cannot mean that the tax measure is selective. The Court of First Instance erred in holding that even such a difference can amount to selectivity.

Fourth plea in law: Infringement of Article 87(1) EC. Failure to state adequate reasons.

The Court of First Instance erred in regarding the measure as selective in so far as it is not available to all companies. It is in fact available to all companies which meet the requirements for being listed on a regulated market. Furthermore, the decision to seek listing entails structural burdens of the highest order, which non-listed companies do not have to bear. The choice of listed companies is based on those objective criteria, and the advantage is consistent with and linked to the different situation — in terms of structural costs — in which the two categories of company are placed. That means that the measure is of general application and non-selective. The reasoning of the Court of First Instance, however, did not adequately address the evidence provided by Italy in that regard.

Fifth plea in law: Infringement of Article 87(1) EC.

The Court of First Instance erred in holding that the measures are in any event selective on account of their brief duration, which means that companies which decide to seek listing at a later date are excluded. The temporary nature of the tax concession can be explained by the need for budget balances and the experimental nature of the measures; however, that does not affect their structure, which is the sole criterion on the basis of which their selectivity or non-selectivity falls to be determined.

Sixth plea in law: Infringement of Article 87(3)(c) EC. Failure to state adequate reasons.

The measures, even if they are regarded as State aid, are compatible with the common market under Article 87(3)(c) EC, since they constitute investment aid to facilitate the development of certain economic activities. The Court of First Instance erred in regarding the measures as operating aid, disregarding the ongoing character of the effects produced by listing on the structure and operating effectiveness of the companies, and in not holding that the increase in listings on regulated markets is an activity considered worthy of fostering, even at Community level. The Court of First Instance should therefore have criticised the Commission for exercising its discretion in the matter without taking as a basis a correct assessment of the facts.

([1]) OJ L 83, 27.3.1999, p. 1.

Appeal brought on 24 November 2009 by Dominio de la Vega, S. L against the judgment of the Court of First Instance (Seventh Chamber) of 16 September 2009 in Case T-458/07 Dominio de la Vega S.L. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Ambrosio Velasco, S.A.

(Case C-459/09 P)

(2010/C 24/64)

Language of the case: Spanish

Parties

Appellant: Dominio de la Vega, S. L. (represented by: E. Caballero Oliver y A. Sanz-Bermell y Martínez, lawyers)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Ambrosio Velasco, S.A.

Form of order sought

— Set aside entirely the judgment under appeal in Case T-458/07 delivered on 16 September 2009, and consequently,

— Give final judgment in the case, declare that the signs at issue are not similar and therefore that there is no likelihood of confusion, and allow registration of the Community trade mark No 2 789 576 'Dominio de la Vega' in Class 33, since it is not prohibited by Article 8(1)(b) of Regulation (EC) No 40/94, now Regulation No 201/2009.

— Alternatively, if necessary, refer the case back to the Court of First Instance of the European Communities for judgment in accordance with the binding criteria established by the Court of Justice.

— Order OHIM and the intervening party to pay the costs, both of these proceedings and of the earlier proceedings before the Court of First Instance of the European Communities.

Pleas in law and main arguments

1. Infringement of Article 8(1)(b) and also of Article 8(2)(i) and (ii) of formerly Regulation (EC) No 40/94 [1] now Regulation (EC) No 207/2009 [2]. The earlier mark which is the ground of opposition in this case is the Community trade mark. An error of law is committed in the judgment under appeal, the fact that the mark is a Community mark is not taken into account, and the relevant public for the assessment of the likelihood of confusion between the marks at issue is considered to be a public which is incorrect and contrary to that prescribed in Regulation on the Community trade mark applicable to the case.

2. Error of Law in assessment and decision to hold documents produced as inadmissible, resulting in an incorrect assessment of the likelihood of confusion of the Spanish consumer. The Court of First Instance distorted the evidence in support of the coexistence of the marks in Spain, that error of law leading to an infringement of Article 8(1)(b) of Regulation No 40/94, now Regulation No 207/2009

[1] Council Regulation of 20 December 1993 on the Community trade mark, OJ L 11, p. 1.

[2] Council Regulation of 26 February 2009 on the Community trade mark (codified version) (Text with EEA relevance), OJ L 78, p. 1.

Appeal brought on 20 November 2009 by Inalca SpA — Industria Alimentari Carni and Cremonini SpA against the order made on 4 September 2009 in Case T-174/06 Inalca and Cremonini v Commission

(Case C-460/09 P)

(2010/C 24/65)

Language of the case: Italian

Parties

Appellants: Inalca SpA — Industria Alimentari Carni and Cremonini SpA (represented by: F. Sciandone and C. D'Andria, avvocati)

Other party to the proceedings: Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal and refer the case back to the Court of First Instance for a decision on the substance in the light of such guidance as the Court of Justice may provide;

— order the Commission to pay the costs of the present proceedings together with those incurred in Case T-174/06.

Pleas in law and main arguments

A. The distinction between the procedural criterion relating to the point at which time starts to run for the purposes of bringing proceedings and verification that the conditions for liability have been satisfied: (i) contradictory nature of the grounds stated and (ii) non-compliance with Community case-law

The grounds of the order under appeal are manifestly contradictory in so far as, on the one hand, the order refers to settled Community case-law according to which time for the purposes of bringing actions seeking to establish non-contractual liability on the part of the Community starts to run only upon fulfilment of all the conditions necessary for the creation of an obligation to pay compensation and, in particular, only when the damage in respect of which compensation is sought has become actual whereas, on the other hand, the order rejects the applicants' argument that the damaging effects of the letter at issue became certain only upon the adoption of the Commission decision of 3 October 2006. [1]

Moreover, the Court of First Instance distorted the Community case-law by determining the initial point from which time started to run for the purposes of bringing proceedings by reference to the material damage suffered by the applicants.

B. Time-barring of the action by reference to the costs of legal assistance and consultation and staff costs: (i) contradictory and manifestly illogical nature of the grounds stated and (ii) non-compliance with the Community case-law

The grounds of the order under appeal are plainly contradictory, in so far as the Court of First Instance begins by stating a general principle relating to damage which is ongoing and then goes on to disregard that general principle when determining the nature (whether instantaneous or not) of the costs of legal assistance and consultation and the staff costs. The grounds are also vitiated by an obvious lack of logical cohesion, in so far as, on the one hand, the Court of First Instance acknowledged the ongoing nature of the costs generated by the lodging of insurance policies guaranteeing payment while, on the other hand, it ruled out the possibility that the legal assistance costs were ongoing, even though these had also arisen again and again over the years, pending resolution of the various procedures launched in the wake of the UCLAF investigation.

The approach of the Court of First Instance was also at odds with its own case-law, which has come to recognise in the course of the years that the provision of legal advice is not instantaneous.

C. The inadmissibility of the claim for compensation for loss of profit: distortion of the arguments and infringement of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance

The Court of First Instance infringed Article 44(1)(c) of the Rules of Procedure and distorted the arguments of the applicants in failing to take into consideration the numerous items of evidence provided in the course of the proceedings and in holding that the claim for compensation for the damage suffered by the applicants in the form of loss of profit lacked the necessary precision.

D. The non-material damage: non-compliance with the case-law and manifestly illogical nature of the grounds stated

In categorising the non-material damage as instantaneous and not ongoing, without taking into account the particular characteristics of the non-material damage, the Court of First Instance adopted an approach which was manifestly at odds with Community case-law. The order under appeal is also vitiated by manifest lack of logical cohesion, in so far as the Court of First Instance takes case-law relating exclusively to material damage as a basis for holding that the non-material damage is not ongoing.

E. The non-material damage: infringement of Article 44(1)(c) of the Rules of Procedure of the Court of First Instance, non-compliance with the case-law on non-material damage and manifestly illogical nature of the grounds stated

The Court of First Instance infringed Article 44(1)(c) in holding that the claim for compensation for non-material damage was inadmissible for lack of the necessary precision, in so far as the applicants did not merely complain of vague intangible damage, but provided the Court with numerous items of evidence, which were nevertheless wholly ignored.

The Court of First Instance also acted counter to the relevant case-law on entitlement to compensation for non-material damage in seeking to determine the extent of the damage by reference to parameters which are inherently difficult to quantify or to demonstrate conclusively.

Subsequently, the Court of First Instance further erred in law by stating grounds which are manifestly illogical in so far as it took case-law relating exclusively to material damage as a basis for holding that the claim for compensation for non-material damage was insufficiently precise.

F. Error in law relating to the condition concerning a causal link

The Court of First Instance erred in law by concluding that there was no direct causal link between the sending of the letter of 6 July 1998 to the Italian authorities — which gave rise to the reimbursement letters from the Italian authorities to the applicants — and the damage suffered by the applicants, that is to say, the payment of the insurance policies as guarantees for the purpose of suspending the immediate reimbursement of the sums contested.

G. Breach of the principle that the duration of proceedings must be reasonable: (i) annulment of the order under appeal and (ii) further manifestation of the flaw for the purposes of the action for damages

The Court of First Instance breached the principle that the duration of proceedings must be reasonable, a general principle of Community law which is also set out in the first paragraph of Article 6 of the European Convention on Human Rights and Fundamental Freedoms and in Article 47 of the Charter of Fundamental Rights of the European Union.

([1]) Commission Decision 2006/678/EC of 3 October 2006 on the financial treatment to be applied, in the context of clearance of expenditure financed by the Agricultural Guidance and Guarantee Section, in certain cases of irregularity by operators (OJ L 278, 10.10.2006, p. 24).

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 25 November 2009 — Stichting de Thuiskopie v Mijndert van der Lee and Others

(Case C-462/09)

(2010/C 24/66)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Stichting de Thuiskopie

Respondents: Mijndert van der Lee, Hananja van der Lee, Opus Supplies Deutschland GmbH

Questions referred

1. Does Directive 2001/29/EC, ([1]) in particular Article 5(2)(b) and (5) thereof, provide any assistance in determining who should be regarded under national law as owing the 'fair compensation' referred to in Article 5(2)(b)? If so, what assistance does it provide?

2. In a case of distance selling in which the buyer is established in a different Member State to that of the seller, does Article 5(5) of Directive 2001/29/EC require national law to be interpreted so broadly that a person owing the 'fair compensation' referred to in Article 5(2)(b) of the directive who is acting on a commercial basis owes such compensation in at least one of the Member States involved in the distance selling?

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

Appeal brought on 25 November 2009 by Holland Malt B.V. against the judgment of the Court of First Instance (Fourth Chamber) delivered on 9 September 2009 in Case T-369/06: Holland Malt B.V. v Commission of the European Communities

(Case C-464/09 P)

(2010/C 24/67)

Language of the case: English

Parties

Appellant: Holland Malt B.V. (represented by: O. W. Brouwer, A.C.E. Stoffer, P. Schepens, advocaten)

Other parties to the proceedings: Commission of the European Communities, Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

— Set aside paragraphs 168 to 180 of the judgment of the court of First Instance;

— Refer the case back to the CFI or annul the decision of the Commission; and

— Order the Commission to pay the costs of the proceedings

Pleas in law and main arguments

The appeal is directed against the judgment of the Court of First Instance of 9 September 2009 in case T-369/06, Holland Malt B.V. v. Commission (the Judgment), dismissing the application brought by Holland Malt against the decision of the Commission declaring that a subsidy conditionally granted to the Appellant constitutes incompatible aid. The Appellant submits that the Court of First Instance made errors of law and a procedural error in dismissing the application brought by Holland Malt. In this regard, the Appellant has forwarded the following pleas:

A. The Court of First Instance erred in law in paragraphs 169 to 180 of the Judgment by incorrectly interpreting Article 87(3)(c) EC [1] and by incorrectly interpreting and applying the Community Guidelines on state aid in the agricultural sector. In this regard, the Judgment is moreover vitiated by an inconsistent and inadequate reasoning; and

B. The Court of First Instance committed a procedural error in paragraph 168 of the Judgment by misreading and misrepresenting one of the arguments submitted by the Appellant, which adversely affected the interests of the Appellant.

[1] OJ C 321 E, p. 76

Action brought on 25 November 2009 — Commission of the European Communities v Hellenic Republic

(Case C-478/09)

(2010/C 24/68)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: S. La Pergola and M. Karanasou Apostopoulou, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

— Declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Directive 2007/63/EC [1] of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2007/63/EC into domestic law expired on 31 September 2008.

[1] OJ L 300, 17.11.2007, p. 47

Appeal brought on 26 November 2009 by Evets Corp. against the judgment of the Court of First Instance (First Chamber) delivered on 23 September 2009 in Joined Cases T-20/08 and T-21/08: Evets Corp. v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-479/09 P)

(2010/C 24/69)

Language of the case: English

Parties

Appellant: Evets Corp. (represented by: S. Ryan, Solicitor)

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

Form of order sought

The appellant claims that the Court should:

— Annul the decision of the Court of First Instance;

— Declare that the application for *restitutio in integrum* was brought within the time-limits prescribed by Article 78(2) of Regulation N. 40/94 [1];

— Refer the matters back to the CFI so that that Court may in turn refer the case to the Board of Appeal for it to rule on the substantive issue as to whether all due care was taken to renew the trade marks in question;

— Order OHIM to pay the costs before the Court of Justice and the Court of First Instance.

Pleas in law and main arguments

1. This appeal concerns an application for restitutio in integrum under Article 78(2) of Council regulation (EC) No 40/94 (the Community Trade Mark Regulation). The trade mark in issue had lapsed by reason of non-payment of renewal fees.

2. The trade mark proprietor had delegated responsibility for the payment of renewal fees to a third party. However as a consequence of an unintended error, the renewal payment was not made by the due date.

3. OHIM issued notifications of cancellation to the legally qualified representative of the trade mark proprietor, who was not the third party responsible for the payment of renewal fees. The representative forwarded these to the trade mark proprietor who received them several days later.

4. Subsequently the trade mark proprietor filed an application for restitutio in integrum pursuant to Article 78(2). This application was filed less than two months after the proprietor itself received the notifications of cancellation, but more than two months after the legally qualified representative had received them.

5. Article 78(2) requires that the application must be filed in writing within two months from the removal of the cause of non-compliance with the time limit. The issue that arises on this appeal concerns how the date from which time begins to run should be identified.

6. The proprietor contends that the relevant date is the date on which it received the notification. It had assumed responsibility itself, through a third party, to pay renewal fees. It only discovered the error, and had the opportunity to remove the cause of non-compliance, when it actually received such notification.

7. However the Court of First Instance upheld the contention of OHIM that the relevant date was the date of the receipt by the proprietor's legally qualified representative, to which OHIM had sent the notification. OHIM relied upon the provisions of rule 77 which provides that 'Any notification or other communication addressed by the Office to the duly authorized representative shall have the same effect as if it had been addressed to the represented person.'

8. The proprietor contends on this appeal that:

   (i) The purpose of the deeming provisions in rule 77 is to provide that OHIM has discharged its obligations to notify a party when it sends a notification to a party's representative in relation to matters for which that representative has authority to act. OHIM is not then obliged to do anything further. But this is not a relevant consideration in the present case.

   (ii) The 'cause of non-compliance' with the time limit is removed, in the case of time limits for payment of renewal fees, when the trade mark proprietor itself, and/or the person specifically delegated by it as responsible for payment, actually becomes aware of the unintended failure to pay. Any other conclusion would render the relevant provision unworkable: in particular a professional representative will always know of and be expected to be aware of the relevant time limits so that the sending of a notification by OHIM to him/her would ordinarily be irrelevant anyway.

   (iii) Payment of renewal fees is a simple financial transaction that does not require legal representation. So a party can pay the fees itself or delegate any other person to do so. Where the 'representative' of a party — who acted for the party in proceedings before the Office — is not also under a separate responsibility to pay renewal fees, then notification of non-payment to that representative is not relevant; it is not notice to the party and it cannot be so deemed. That representative is not legally responsible for acting on such notification (though may transmit it to his client as a matter of professional courtesy).

   (iv) On facts such as the present facts, a representative for other purposes is not a 'duly authorized representative' for the purpose of payment of renewal fees. Notice to him/her therefore does not satisfy rule 77 and does not bring the 'deeming' provision into play.

   (v) In summary, the relevant person to be considered is the one with responsibility for taking the act in question. Only when that person becomes aware of the non-compliance can the relevant time period for an application begin to run.

   (vi) While the provisions of the EPC are not strictly binding in community law, they must clearly be highly persuasive. Where there is EPO case law on the same wording, it is highly desirable that it be construed in the same way. If interpreted differently, then one or the other interpretation must be wrong. The appellant submits that the parallel decisions in the EPO are correct and that their reasoning is correct.

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

Appeal brought on 26 November 2009 by AceaElectrobal Produzione SpA against the judgment delivered by the Court of First Instance (First Chamber) on 8 September 2009 in Case T-303/05 AceaElectrabel Produzione SpA v Commission of the European Communities

(Case C-480/09 P)

(2010/C 24/70)

Language of the case: Italian

Parties

Appellant: AceaElectrabel Produzione SpA (represented by: L. Radicati di Brozolo, M. Merola, T. Ubaldi and E. Marasà, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the judgment under appeal.

— Grant the form of order sought at first instance or, in the alternative, refer the case back to the General Court pursuant to Article 61 of the Statute of the Court of Justice.

— Order the Commission to pay the costs of both sets of proceedings.

Pleas in law and main arguments

1. Distortion of the pleas in law, errors in law and irrational and contradictory reasoning, with reference to the identification of the aid recipient and the assessment of the Commission's discretion for the purpose of defining the aid recipient.

   By its first ground of appeal, the appellant, AceaElectrabel Produzione SpA ('AEP' or 'the appellant') complains that the judgment is seriously flawed, insofar as the Court of First Instance rejected the plea in law relating to the failure properly to identify the recipient of the aid, which is the subjective condition for the application to the case in question of the principle established in the *Deggendorf* case-law (according to which, the grant of new aid which in itself is judged to be compatible with the common market may, in certain circumstances, be suspended until previous unlawful aid paid to the same undertaking has been reimbursed). First of all, the appellant disputes the finding that that plea is inadmissible insofar as it relates to infringement of Article 88 of Regulation (EC) No 659/99. ([1]) AEP submits that the Court of First Instance distorted that part of the plea, which was intended by the appellant simply to indicate that the misidentification of the aid recipient resulted from one of the characteristic defects of the administrative measure. By stating that arguments alleging infringement of the rules governing the recovery of aid have no bearing on the case, the Court of First Instance demonstrated that it had distorted the arguments put forward in support of that part of the plea in law in question.

   Moreover, the appellant challenges the judgment insofar as it failed to declare the decision unlawful, notwithstanding the serious error of identifying AEP (the recipient of the new aid) with the ACEA Group (the recipient of the aid which was not reimbursed), based on the incorrect, illogical and contradictory application of the concept of an economic unit of a group of undertakings developed in Community case-law. The appellant disputes that such a concept can be applied to the case of a joint venture controlled jointly by two separate groups (as is the case with AEP), since the established case-law on economic units of undertakings refers only to cases involving a number of undertakings controlled solely by a single entity. The error is compounded insofar as the Court of First Instance regarded as irrelevant the fact that 70 % of AEP's capital is in a different economic group, which has nothing whatsoever to do with the recipient of the aid which was not reimbursed. The Court of First Instance also erred in its application of the concept of a functionally autonomous undertaking, since it stated that the appellant cannot be regarded as functionally autonomous because it is subject to the joint control of two undertakings.

2. Distortion of the pleas in law, error in law and contradictory and inadequate reasoning, with reference to the arguments put forward by the appellant concerning the scope of the *Deggendorf* case-law for the purpose of the assessment of the case in question.

   By its second ground of appeal, the appellant submits that the judgment incorrectly applied the *Deggendorf* case-law insofar as it also supported the Commission's assessment regarding the existence of the objective requirement for the application of the *Deggendorf* case-law. The appellant disputes in particular the reasoning of the Court of First Instance in the part in which it finds that the Commission was not required to adduce precise, detailed evidence to show that the combined effect of the first and second aid would adversely affect intra-Community trade in such a way as to render the new aid incompatible with the common market. The burden of proof for the purpose of determining whether notified aid is incompatible cannot be rebutted at will, in particular where the Commission has failed to make use of the instruments which the rules of procedure make available to it. The Court of First Instance failed to address those issues raised by the appellant and uncritically confirmed the Commission's decision. Lastly, the Court of First Instance neither understood nor addressed the plea raised by the appellant insofar as it maintained that the *Deggendorf* case-law is not intended to establish a means of penalising undertakings which have not reimbursed previous aid but simply to prevent the combined effect of more than one grant of aid to a single undertaking adversely affecting intra-Community trade in such a manner as to render the new aid incompatible, until such time as the previous aid has been repaid.

([1]) Council Regulation (EC) No 659/99 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999 L 83, p. 1).

Action brought on 27 November 2009 — European Commission v Czech Republic

(Case C-481/09)

(2010/C 24/71)

Language of the case: Czech

Parties

Applicant: European Commission (represented by: S. Pardo Quintillán and M. Thomannová-Körnerová, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by failing to adopt all such laws, regulations and administrative provisions necessary to comply with Directive 2006/7/EC of the European Parliament and of the Council of 15 February 2006 concerning the management of bathing water quality and repealing Directive 76/160/EEC, [1] or in any event, by failing to inform the Commission thereof, the Czech Republic has failed to fulfil its obligations under Article 18 of that directive;

— order Czech Republic to pay the costs.

Pleas in law and main arguments

The period for implementing the directive into domestic law expired on 24 March 2008.

[1] OJ 2006 L 64, p. 37.

Reference for a preliminary ruling from Court of Appeal (England & Wales) (Civil Division) (United Kingdom) made on 30 November 2009 — Budějovický Budvar, národní podnik v Anheuser-Busch, Inc.

(Case C-482/09)

(2010/C 24/72)

Language of the case: English

Referring court

Court of Appeal (England & Wales) (Civil Division)

Parties to the main proceedings

Applicant: Budějovický Budvar, národní podnik

Defendant: Anheuser-Busch, Inc.

Questions referred

1. What is meant by 'acquiesced' in Article 9(1) of Council Directive 89/104/EEC [1] and in particular:

   (a) is 'acquiesced' a community law concept or is it open to the national court to apply national rules as to acquiescence (including delay or long established honest concurrent use)

   (b) if 'acquiesced' is a community law concept can the proprietor of a trade mark be held to have acquiesced in a long and well- established honest use of an identical mark by another when he has long known of that use but has been unable to prevent it?

   (c) in any case, is it necessary that the proprietor of a trade mark should have his trade mark registered before he can begin to 'acquiesce' in the use by another of (i) an identical or (ii) a confusingly similar mark?

2. When does the period of 'five successive years' commence and in particular, can it commence (and if so can it expire) before the proprietor of the earlier trade mark obtains actual registration of his mark; and if so what conditions are necessary to set time running?

3. Does Art 4(1)(a) of Council Directive 89/104/EEC apply so as to enable the proprietor of an earlier mark to prevail even where there has been a long period of honest concurrent use of two identical trade marks for identical goods so that the guarantee of origin of the earlier mark does not mean the mark signifies the goods of the proprietor of the earlier and none other but instead signifies his goods or the goods of the other user?

[1] First Council Directive 89/104/EEC of 21 December 1988 to approximate the laws of the Member States relating to trade marks OJ L 40, p. 1

Action brought on 30 November 2009 — Commission v Italian Republic

(Case C-486/09)

(2010/C 24/73)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande and N. Bambara, Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Regulation (EC) No 1030/2002 of 13 June 2002, [1] the Italian Republic has failed to fulfil its obligations under Articles 1 and 9 of the regulation;

— Order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 1 in conjunction with Article 9 of Regulation (EC) No 1030/2002 requires the Member States to take all the measures necessary to issue a uniform format for residence permits for third-country nationals by 14 August 2003.

(1) Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals (OJ 2002 L 157, p. 1).

Action brought on 30 November 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-491/09)

(2010/C 24/74)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: J. Sénéchal and S. La Pergola, acting as Agents)

Defendant: Kingdom of Belgium

Form of order sought

— Declare that, by failure to adopt the laws, regulations and administrative provisions necessary to implement Directive 2007/63/EC of the European Parliament and of the Council of 13 November 2007 amending Council Directives 78/855/EEC and 82/891/EEC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies (1) or in any event by failing to notify the Commission of the adoption of the necessary provisions for fully transposing the directive, the Kingdom of Belgium has failed to fulfil its obligations under Article 4 of the directive;

— order Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposing Directive 2007/63/CE expired on 31 December 2008. At the time the present action was lodged, the defendant had not yet adopted the necessary measures for the implementation of this directive, or had in any case not notified the Commission thereof.

(1) OJ L 300, 17.11.2007, p. 47

Reference for a preliminary ruling from the Commissione Tributaria Provinciale di Taranto (Italy) lodged on 30 November 2009 — Società Agricola Esposito Srl v Agnezia delle Entrate — Ufficio Taranto 2

(Case C-492/09)

(2010/C 24/75)

Language of the case: Italian

Referring court

The Commissione tributaria provinciale di Taranto

Parties to the main proceedings

Applicant: Società Agricola Esposito Srl

Defendant: Agnezia delle Entrate — Ufficio Taranto 2

Questions referred

1. In so far as they require a licence to be obtained by a *consumer* who has concluded a subscription contract, are Article 21 of the Tariff annexed to Presidential Decree No 641/1972 and Article 160 of Legislative Decree No 259/2003 compatible with the rules laid down in Directive 2002/20/EC (1), which, by contrast, refers to individual licences to be obtained by undertakings providing the services or the networks?

2. Are Articles 1 and 9 of Presidential Decree No 641/1972 and Article 21 of the Tariff annexed thereto at variance with the rule that there must be individual justification for each charge levied in connection with any authorisation which emerges from an interpretation of Articles 12 and 13 of Directive 2002/20/EC?

3. Is the fact that the Italian Tassa di Concessione Governativa is payable by persons who have concluded a subscription contract but not by persons who use rechargeable cards compatible with the principles set out in Directive 2002/21/EC (2), in particular *'the principle of non-discrimination in the allocation and assignment of radio frequencies by national regulatory authorities'* laid down in Article 9(1) of the directive?

4. Is the Tassa di Concessione Governativa compatible with the principles set out in Directive 2002/77/EC (3) and Directive 2002/21/EC, which provide that *'any national scheme …, serving to share the net cost of the provision of universal service obligations shall be based on objective, transparent and non-discriminatory criteria and shall be consistent with the principles of proportionality and of least market distortion'*?

5. By increasing the costs for users of mobile telephone services who have concluded subscription contracts, does the Italian Tassa di Concessione Governativa deter entry to the Italian market, thereby prohibiting, to the prejudice of consumers, the formation of a competitive market, in breach of the principles laid down in Directive 2002/21/EC?

6. Does the Tassa di Concessione Governative infringe the principle laid down in Article 25 of the Treaty, which provides that *'[c]ustoms duties on imports and exports and charges having equivalent effect shall be prohibited between Member States. This prohibition shall also apply to customs duties of a fiscal nature'*?

(1) OJ 2002 L 108, p. 21.
(2) OJ 2002 L 108, p. 33.
(3) OJ 2002 L 249, p. 21.

Reference for a preliminary ruling from the Commissione Tributaria Provinciale di Alessandria (Italy) lodged on 1 December 2009 — Bolton Alimentari SpA v Agenzia Dogane Ufficio delle Dogane Di Alessandria

(Case C-494/09)

(2010/C 24/76)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Alessandria

Parties to the main proceedings

Applicant: Bolton Alimentari SpA

Defendant: Agenzia Dogane Ufficio delle Dogane Di Alessandria

Questions referred

1. Is Article 239 CCC to be interpreted as meaning that, in a case such as that at issue here, where the Member State takes the view that the European Commission cannot be criticised for having committed any irregularity and none of the other circumstances contemplated in Article 905(1) (of Regulation No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code)('ICCC') obtain, that same Member State may decide independently on an application for repayment to the debtor within the meaning of Article 899(2) ICCC?

2. If the answer to the preceding question is in the affirmative, may the expression 'special situation' used in (Article 905(1) ICCC with reference to)Article 239 of the Common Customs Code refer to the exclusion of a Community importer from a tariff quota whose opening date falls on a Sunday because of the Sunday closing of the customs offices of the Member State in question?

3. Are Article 308a to 308c ICCC and the relevant provisions of the Administrative Arrangement on the management of tariff quotas to be interpreted as meaning that, in a case such as that at issue here, the Member State should have asked the Commissione Tributaria beforehand to suspend the tariff quota in question in order to enable Italian importers to receive equal and non-discriminatory treatment in comparison with importers from other Member States?

4. Are the exclusion of Bolton s.p.a. from the quota, as decided by the Commissione Tributaria and the TAXUD note, measures taken in compliance with Article 308a to 308c ICCC, as well as with the relevant provisions of the Administrative Arrangement on the management of tariff quotas adopted by the Customs Code Committee (TAXUD/3439/2006-rev.1-[EN]), and therefore valid?

Action brought on 2 December 2009 (faxed on 30 November 2009) — European Commission v Italian Republic

(Case C-496/09)

(2010/C 24/77)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: L. Pignataro and E. Righini, agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt all the measures necessary to comply with the judgment delivered by the Court of Justice of the European Communities on 1 April 2004 in Case C-99/02 concerning the recovery from beneficiaries of aid considered unlawful and incompatible with the common market by Commission Decision 2000/128/EC (1) of 11 May 1999 concerning aid granted by Italy to promote employment, the Italian Republic has failed to fulfil its obligations under that decision and under Article 228(1) EC;

— Order the Italian Republic to pay to the Commission a daily penalty payment of EUR 285 696 for the delay in implementing the judgment in Case C-99/02 concerning Decision 2000/128/EC, from the date on which judgment is delivered in the present case until the judgment in Case C-99/02 is complied with;

— Order the Italian Republic to pay to the Commission a lump sum, the amount of which is calculated by multiplying a daily amount of EUR 31 744 by the number of days over which the failure to fulfil obligations continues from the date of delivery of judgment in the present case concerning Decision 2000/128/EC;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Italian Republic has failed to adopt all the measures necessary to recover the aid considered unlawful and incompatible in the decision in that, by June 2009, it had recovered only EUR 52 088 600,60 out of a total sum to be recovered of EUR 281 525 688,79. The Italian Republic acknowledges that the sum yet to be recovered is EUR 229 437 086,19. It has therefore failed to adopt all the measures necessary to comply with the decision, which it was required to do in the judgment in Case C-99/02.

([1]) OJ 2000 L 42, p. 1.

Action brought on 8 December 2009 — European Commission v Italian Republic

(Case C-508/09)

(2010/C 24/78)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: C. Zadra and D. Recchia, Agents)

Defendant: Italian Republic

Form of order sought

The applicant claims that the Court should:

— declare that the Italian Republic has failed to fulfil its obligations under Article 9 of Directive 79/409/EEC ([1]) in so far as the Region of Sardinia has adopted and applies legislation, relating to the authorisation of derogations from the rules for the protection of wild birds, which does not comply with the conditions laid down in Article 9 of Directive 79/409/EEC;

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission maintains that the legislation adopted by the Region of Sardinia is not in conformity with the provisions laid down in Article 9 of Directive 79/409/EEC.

According to the Commission, Regional Law No 2 of 13 February 2004, which governs hunting carried out in reliance on a derogation, and Decrees No 3/V of 2004 and No 8/IV of 2006, which were adopted on the basis of that law, fail to comply with the requirements under Article 9 of Directive 79/409 inasmuch as:

— sometimes the opinion of the scientific body is sought but, if negative, ignored and sometimes the opinion of that body is not even sought;

— adequate reasons have not been stated (concerning the needs to be protected by means of hunting in reliance on a derogation; the other options explored; the probable results);

— there is no adequate control mechanism making it possible to check that the conditions governing derogation are complied with and to take action in good time;

— the regional law does not require compliance with the conditions laid down in Article 9(2) of Directive 79/409 and, accordingly, no reference is made to those conditions in the derogation measures.

Regional Law No 2 of 13 February 2004 was amended by Regional Law No 4 of 11 May 2006. Notwithstanding those amendments, neither Law No 2 of 13 February 2004 nor Decree No 2225/DecA/3 of 30 January 2009, which was adopted pursuant to that law, satisfies the requirements laid down in Article 9 of Directive 79/409, inasmuch as:

— the fact that provision has now been made for consultation of the scientific body does not preclude the adoption of derogation measures without adequate reasons or justification or even the adoption of derogation measures without the opinion of the scientific body;

— Regional Law No 2/2004, as amended, still does not provide that individual derogation measures must refer to the conditions laid down in Article 9(2) of Directive 79/409 (indeed Decree 2223 is also deficient in that respect).

([1]) Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ L 103, 25.4.1979, p. 1).

GENERAL COURT

Judgment of the Court of First Instance of 30 November 2009 — France v Commission

(Joined Cases T-427/04 and T-17/05) [1]

(State aid — France Télécom's business tax regime for the years 1994 to 2002 — Decision declaring the aid incompatible with the common market and ordering its recovery — Advantage — Limitation period — Legitimate expectations — Legal certainty — Breach of essential procedural requirements — Collegiality — Rights of defence and procedural rights of other interested parties)

(2010/C 24/79)

Language of the case: French

Parties

Applicant: French Republic (represented initially by G. de Bergues, R. Abraham and S. Ramet, then by G. de Bergues, S. Ramet and E. Belliard and finally by G. de Bergues, E. Belliard and A.-L. Vendrolini, acting as Agents)

Defendant: Commission of the European Communities (represented by: C. Giolito and J. Buendia Sierra, acting as Agents)

Re:

Action for annulment of Commission Decision 2005/709/EC of 2 August 2004 concerning State aid paid by France to France Télécom (OJ 2005 L 269, p. 30).

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders the Republic of France and France Télécom SA to pay the costs.*

[1] OJ C 19, 22.1.2005.

Judgment of the General Court of 9 December 2009 — Apache Footwear and Apache II Footwear v Council

(Case T-1/07) [1]

(Dumping — Imports of footwear with uppers of leather originating in China and Vietnam — Market economy status — Community interest)

(2010/C 24/80)

Language of the case: English

Parties

Applicants: Apache Footwear Ltd (Pingsha, China); and Apache II Footwear Ltd (Qingxin) (Taiping Zhen, China) (represented initially by: O. Prost and S. Ballschmiede, and subsequently by O. Prost and E. Berthelot, lawyers)

Defendant: Council of the European Union (represented by: J.-P. Hix, acting as Agent, assisted by G. Berrisch, lawyer)

Interveners in support of the defendant: European Commission (represented by: H. van Vliet and T. Scharf, acting as Agents; Confédération européenne de l'industrie de la chaussure (CEC), (Brussels, Belgium) (represented initially by P. Vlaemminck, G. Zonnekeyn and S. Verhulst, and subsequently by P. Vlaemminck and A. Hubert, lawyers); BA.LA. di Lanciotti Vittorio & C. Sas (Monte Urano, Italy) and the 16 other interveners the names of which are listed in the Annex to the judgment, represented by P. Tabellini, G. Celona and C. Cavaliere, lawyers)

Re:

Application for partial annulment of Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam (OJ 2006 L 275, p. 1), in so far as it concerns the applicants.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Apache Footwear Ltd and Apache II Footwear Ltd (Qingxin) to bear their own costs as well as those incurred by the Council of the European Union;*

3. *Orders the European Commission, the Confédération européenne de l'industrie de la chaussure (CEC), BA.LA. di Lanciotti Vittorio & C. Sas and the 16 other interveners the names of which are listed in the Annex to bear their own costs.*

(1) OJ C 56, 10.3.2007.

Judgment of the Court of First Instance of 30 November 2009 — Esber v OHIM — Coloris Global Coloring Concept (COLORIS)

(Case T-353/07) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark COLORIS — Earlier national word mark COLORIS — Relative ground for refusal — Genuine use of the earlier trade mark — Article 15(2)(a) and Article 43(2) and (3) of Regulation (EC) No 40/94 (now Article 15(1)(a) and Article 42(2) and (3) of Regulation (EC) No 207/2009))

(2010/C 24/81)

Language of the case: English

Parties

Applicant: Esber, SA (Burceña-Baracaldo, Spain) (represented by: T. Villate Consonni, J. Calderón Chavero and M. Yañez Manglano, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Folliard-Monguiral, Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Coloris Global Coloring Concept (Villeneuve Loubet, France) (represented by: K. Manhaeve, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 28 June 2007 (Case R 1060/2006-1), concerning opposition proceedings between Coloris Global Coloring Concept and Esber, SA.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Esber, SA to pay the costs.*

(1) OJ C 269, 10.11.2007.

Judgment of the General Court of 2 December 2009 — Volvo Trademark v OHIM — Grebenshikova (SOLVO)

(Case T-434/07) (1)

(Community trade mark — Opposition proceedings — Application for the Community figurative mark SOLVO — Earlier Community and national word and figurative marks VOLVO — Relative ground for refusal — Article 8(1)(b) and (5) of Regulation (EC) No 40/94 (now Article 8(1)(b) and (5) of Regulation (EC) No 207/2009))

(2010/C 24/82)

Language of the case: English

Parties

Applicant: Volvo Trademark Holding AB (Gothenburg, Sweden) (represented by: T. Dolde, V. von Bomhard and A. Renck, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: S. Laitinen and A. Folliard Monguiral, Agents)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Elena Grebenshikova (Saint Petersburg, Russia) (represented by: M. Björkenfeldt, lawyer)

Re:

ACTION brought against the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 2 August 2007 (Case R 1240/2006-2), relating to opposition proceedings between Volvo Trademark Holding AB and Ms Elena Grebenshikova.

Operative part of the judgment

The General Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 2 August 2007 (Case R 1240/2006-2), relating to opposition proceedings between Volvo Trademark Holding AB and Ms Elena Grebenshikova;*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) to bear its own costs and to pay half of those incurred by Volvo Trademark Holding;*

3. *Orders Ms Grebenshikova to bear her own costs and to pay half of those incurred by Volvo Trademark Holding.*

(1) OJ C 37, 9.2.2008.

Judgment of the General Court of 10 December 2009 — Antwerpse Bouwwerken v European Commission

(Case T-195/08) (1)

(Public procurement — Community tendering procedure — Construction of a reference materials production hall — Rejection of a tender — Action for annulment — Interest in bringing proceedings — Admissibility — Interpretation of a condition laid down in the contract documents — Compliance of a tender with the conditions laid down in the contract documents — Exercise of the power to request clarification of tenders — Action for damages)

(2010/C 24/83)

Language of the case: Dutch

Parties

Applicant: Antwerpse Bouwwerken NV (Antwerp, Belgium) (represented initially by: J. Verbist and D. de Keuster, and subsequently by: J. Verbist, B. van de Walle de Ghelcke and A. Vandervennet, lawyers)

Defendant: European Commission (represented by: E. Manhaeve, acting as Agent, and by M. Gelders, lawyer)

Re:

Application for, firstly, annulment of the decision of the Commission rejecting the tender submitted by the applicant in a restricted public procurement procedure concerning the construction of a reference materials production hall in the grounds of the Institut des matériaux et mesures de référence (Institute for Reference Materials and Measurements) in Geel (Belgium) and awarding the contract to another tenderer and, secondly, compensation for the damage purportedly suffered by the applicant by reason of that decision of the Commission

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Antwerpse Bouwwerken NV to pay the costs, including those relating to the proceedings for interim relief in Case T 195/08 R.*

(1) OJ C 183, 19.7.2008.

Judgment of the Court of First Instance of 3 December 2009 — Iranian Tobacco v OHIM — AD Bulgartabac (Bahman)

(Case T-223/08) (1)

(Community trade mark — Revocation proceedings — Figurative Community trade mark Bahman — Interest in bringing proceedings not required — Article 55(1)(a) of Regulation (EC) No 40/94 (now Article 56(1)(a) of Regulation (EC) No 207/2009))

(2010/C 24/84)

Language of the case: German

Parties

Applicant: Iranian Tobacco Co. (Tehran, Iran) (represented by: M. Beckensträter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: AD Bulgartabac Holding Sofia (Sofia, Bulgaria) (represented by: M. Maček, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 10 April 2008 in Case R 709/2007-1 concerning revocation proceedings between AD Bulgartabac Holding Sofia and Iranian Tobacco Co.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *orders Iranian Tobacco to pay the costs.*

(1) OJ C 223 of 30.8.2008

Order of the Court of First Instance of 3 December 2009 — Iranian Tobacco v OHIM — AD Bulgartabac (TIR 20 FILTER CIGARETTES)

(Case T-245/08) [1]

(Community trade mark — Revocation proceedings — Figurative Community trade mark TIR 20 FILTER CIGARETTES — Interest in bringing proceedings not required — Article 55(1)(a) of Regulation (EC) No 40/94 (now Article 56(1)(a) of Regulation (EC) No 207/2009))

(2010/C 24/85)

Language of the case: German

Parties

Applicant: Iranian Tobacco Co. (Tehran, Iran) (represented by: A. Beckensträter, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: AD Bulgartabac Holding Sofia (Sofia, Bulgaria) (represented by: M. Maček, lawyer)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 11 April 2008 in Case R 708/2007-1 concerning revocation proceedings between AD Bulgartabac Holding Sofia and Iranian Tobacco Co

Operative part of the order

1. *Dismisses the action;*

2. *orders Iranian Tobacco to pay the costs.*

[1] OJ C 223 of 30.8.2008

Judgment of the General Court of 9 December 2009 — Commission v Birkhoff

(Case T-377/08 P) [1]

(Appeal — Staff case — Officials — Social security — Health insurance — Reimbursement of medical expenses — Annulment at first instance of the decision refusing the prior authorisation for reimbursement of the costs of acquisition of a wheelchair — Distortion of the clear sense of evidence)

(2010/C 24/86)

Language of the case: German

Parties

Appellant: European Commission (represented by: J. Currall and B. Eggers, acting as Agents)

Other party to the proceedings: Gerhard Birkhoff (Weitnau, Germany) (represented by: C. Inzillo, lawyer)

Re:

Appeal brought against the judgment of the Civil Service Tribunal (First Chamber) of 8 July 2008 in Case F 76/07 *Birkhoff* v *Commission*, seeking to have that judgment set aside.

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the European Union Civil Service Tribunal (First Chamber) of 8 July 2008 in Case F-76/07 Birkhoff v Commission, not published in the ECR;*

2. *Sets aside the decision of the Settlements Office of 8 November 2006.*

3. *Orders Mr Gerhard Birkhoff and the European Commission to bear their own costs in relation to the present instance.*

4. *Orders the Commission to pay all the costs relating to the proceedings at first instance.*

[1] OJ C 327, 20.12.2008.

Judgment of the General Court of 9 December 2009 — Longevity Health Products v OHIM

(Case T-484/08) [1]

(Community trade mark — Opposition proceedings — Application for Community word mark Kids Vits — Earlier Community word mark VITS4KIDS — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94 (now Article 8(1)(b) of Regulation (EC) No 207/2009))

(2010/C 24/87)

Language of the case: German

Parties

Applicant: Longevity Health Products, Inc. (Nassau, Bahamas) (represented by: J. Korab, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Merck KGaA (Darmstadt, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 28 August 2008 (Case R 716/2007-4) relating to opposition proceedings between Merck KGaA and Longevity Health Products, Inc.

Operative part of the judgment

The Court:

1. *dismisses the action;*

2. *orders Longevity Health Products, Inc. to pay the costs.*

[1] OJ C 32, 7.2.2009.

Judgment of the General Court of 9 December 2009 — Earle Beauty v OHIM (SUPERSKIN)

(Case T-486/08) [1]

(Community trade mark — Application for the Community word mark SUPERSKIN — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EC) No 40/94 (now Article 7(1)(c) of Regulation (EC) No 207/2009))

(2010/C 24/88)

Language of the case: English

Parties

Applicant: Liz Earle Beauty Co. Ltd (Ryde, Isle of Wight, United Kingdom) (represented by: M. Cover, Solicitor)

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

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 15 September 2008 (Case R 1656/2007-4), concerning registration of the word sign SUPERSKIN as a Community trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 15 September 2008 (Case R 1656/2007-4), in respect of perfumes, nail and hair care preparations, antiperspirants, deodorants, dentifrice, hair colouring preparations, hair spray, eyecare preparations, nail varnish, nail varnish remover and artificial nails, in Class 3, and hygienic care and cosmetic treatments for the hair, in Class 44;*

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

3. *Orders Liz Earle Beauty Co. Ltd to bear its own costs and to pay half of OHIM's costs, and OHIM to bear the other half of its costs.*

[1] OJ C 6, 10.1.2009.

Judgment of the Court of First Instance of 10 December 2009 — Stella Kunststofftechnik v OHIM — Stella Pack (Stella)

(Case T-27/09) [1]

(Community trade mark — Revocation proceedings — Community word mark Stella — Earlier opposition proceedings based on that mark — Admissibility — Articles 50(1) and 55(1) of Regulation (EC) No 40/94 (now Articles 51(1) and 56(1) of Regulation (EC) No 207/2009))

(2010/C 24/89)

Language of the case: German

Parties

Applicant: Stella Kunststofftechnik GmbH (Eltville, Germany) (represented by: M. Beckensträter, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Führer and G. Schneider, Agents)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Stella Pack S.A. (Lubartów, Poland) (represented by: O. Bischof, lawyer)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 13 November 2008 (Case R 693/2008-4) concerning revocation proceedings between Stella Kunststofftechnik GmbH and Stella Pack sp. z o.o.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Stella Kunststofftechnik GmbH to pay the costs.*

[1] OJ C 82, 4.4.2009.

Order of the Court of First Instance of 20 November 2009 — IPK International — World Tourism Marketing Consultants v Commission

(Case T-41/07) [1]

(Project Ecodata — Commission Decision in preparation of the forced execution of a claim due pursuant to an earlier decision — Action deprived of purpose — No need to adjudicate)

(2010/C 24/90)

Language of the case: German

Parties

Applicant: IPK International — World Tourism Marketing Consultants (Munich, Germany) (represented by: C. Pitschas, lawyer)

Defendant: Commission of the European Communities (represented by: B. Schima, acting as Agent, assisted by C. Arhold, lawyer)

Re:

Action for the annulment of Commission Decision C (2006) 6452 of 4 December 2006 on the recovery of advance payments in the amount of EUR 318 000 made to IPK International — World Tourism Marketing Consultants GmbH for the project Ecodata pursuant to the decision to grant financial assistance of 4 August 1992, prior to the Commission's decision of 13 May 2005 to annul the financial assistance.

Operative part of the order

1. *There is no longer a need to give a ruling on the action.*

2. *IPK International — World Tourism Marketing Consultants GmbH and the European Commission each bear their own costs.*

[1] OJ C 82 of 14.4.2007

Order of the Court of First Instance of 19 November 2009 — EREF v Commission

(Case T-94/07) [1]

(Actions for annulment — Representation by a lawyer is not a third party — Manifestly inadmissible)

(2010/C 24/91)

Language of the case: English

Parties

Applicant: European Renewable Energies Federation (EREF) (Brussels, Belgium) (represented by: D. Fouquet, lawyer)

Defendant: Commission of the European Communities (represented by: N. Khan, acting as Agent)

Re:

Application for annulment of Commission Decision C (2006) 4963 final of 24 October 2006, concerning a Syndicated loan and bilateral loan for the construction by Framatome ANP of a nuclear power station for Teollisuuden Voima Oy.

Operative part of the order

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

2. *European Renewable Energies Federation ASBL (EREF) must bear its own costs and those incurred by the Commission of the European Communities.*

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[1] OJ C 117 of 29.5.2007.

Order of the Court of First Instance of 19 November 2009 — EREF v Commission

(Case T-40/08) [1]

(Action for annulment — Representation by a lawyer who is not a third party — Inadmissibility)

(2010/C 24/92)

Language of the case: English

Parties

Applicant: European Renewable Energies Federation ASBL (EREF) (Brussels, Belgium) (represented by: D. Fouquet, lawyer)

Defendant: Commission of the European Communities (represented by: N. Kahn and B. Martenczuk, Agents)

Re:

Action for annulment of Commission Decision C (2007) 4323 final of 25 September 2007 concerning the measure C 45/2006 implemented by France in the context of the construction by Areva NP of a nuclear power plant for Teollisuuden Voima Oy.

Operative part of the order

1. *The action is dismissed as inadmissible;*

2. *European Renewable Energies Federation ASBL (EREF) shall bear its own costs and pay those of the Commission of the European Communities;*

3. *It is not necessary to decide on the applications for leave to intervene brought by the French Republic, the Republic of Finland, Greenpeace France and Greenpeace Nordic.*

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[1] OJ C 107, 26.4.2008.

Order of the Court of First Instance of 24 November 2009 — Szomborg v Commission

(Case T-228/08) [1]

(Action for failure to act — Commission's failure to present a scientific assessment within the prescribed period — Non-actionable measure — Not individually concerned — Inadmissibility)

(2010/C 24/93)

Language of the case: Polish

Parties

Applicant: Szomborg (Jastarnia, Poland) (represented by: R. Nowosielski, lawyer)

Defendant: Commission of the European Communities (represented by: K. Banks and A. Szmytkowska, Agents)

Re:

Action for failure to act, seeking a declaration that the Commission unlawfully failed to present within the prescribed period the scientific assessment provided for in Article 27 of Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98 (OJ 2005 L 349, p. 1)

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Mr Grzegorz Szomborg shall bear his own costs and pay those incurred by the Commission of the European Communities.*

(1) OJ C 209, 15.08.2008.

Order of the Court of First Instance of 30 November 2009 — Veromar di Tudisco Alfio & Salvatore and Others v Commission

(Joined Cases T-313/08 to T-318/98 and T-320/08 to T-328/08) (1)

(Application for annulment — Regulation (EC) No 530/2008 — Recovery of bluefin tuna stock — Fixing the TAC for 2008 — Measure of general application — Lack of individual concern — Inadmissibility)

(2010/C 24/94)

Language of the case: Italian

Parties

Applicants: Veromar di Tudisco Alfio & Salvatore Snc (Catania, Italy) and the sixteen other applicants of which the names appear in the annex to the order (represented by: A. Maiorana, A. De Matteis and A. De Francesco, lawyers)

Defendant: European Commission (represented by: K. Banks and D. Nardi, acting as Agents)

Re:

Application for annulment of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea (OJ 2008 L 155, p. 9)

Operative part of the order

1. *The actions are dismissed as inadmissible.*

2. *The applicants, Veromar di Tudisco Alfio & Salvatore Snc and the sixteen other applicants of which the names appear in the annex, shall bear their own costs and pay the costs incurred by the European Commission.*

(1) OJ C 272 of 25.10.2008.

Order of the General Court of 1 December 2009 — Cafea GmbH v OHIM — Christian (BEST FARM)

(Case T-53/09) (1)

(Community trade mark — Opposition — Withdrawal of the opposition — No need to adjudicate)

(2010/C 24/95)

Language of the case: German

Parties

Applicant: Cafea GmbH (Hamburg, Germany) (represented by: C. Schumann and M. Hartmann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Dieter Christian (Frankfurt am Main, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 27 November 2008 (Case R 420/2008-1) relating to opposition proceedings between Cafea GmbH and Dieter Christian.

Operative part of the order

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

2. *Cafea GmbH shall bear its own costs and pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

(1) OJ C 90 of 18.4.2009.

Order of the Court of First Instance of 25 November 2009 — Andersen v Commission

(Case T-87/09) [1]

(State aid — Measures in favour of Danske Statsbaner — Public service obligations — Decision to initiate the procedure provided for in Article 88(2) EC — Inadmissibility)

(2010/C 24/96)

Language of the case: English

Parties

Applicant: Jørgen Andersen (Ballerup, Denmark) (represented by: M. Nissen, J. Rivas de Andrés and J. Gutiérrez Gisbert, lawyers)

Defendant: Commission of the European Communities (represented by: B. Martenczuk and C. Urraca Caviedes, acting as Agents)

Re:

Action for annulment of Commission Decision C(2008) 4776 final of 10 September 2008 to initiate the procedure provided for in Article 88(2) EC in respect of State aid C 41/2008 (ex NN 35/2008), implemented by the Kingdom of Denmark in favour of Danske Statsbaner.

Operative part of the order

1. *The application is dismissed as inadmissible.*

2. *Mr Jørgen Andersen is ordered to pay the costs.*

[1] OJ C 113, 16.5.2009.

Action brought on 4 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-445/09)

(2010/C 24/97)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 17 August 2009 in so far as it relates to the set-off between the applicant's claim on the Community under the *Role of Skin* contract, and the Community's alleged claim on the applicant under the EURO-THYMAIDE contract;

— order the Commission to the pay all the costs of the proceedings.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) seeks the annulment of the set-off measure contained in Decision BUDG/C3 D(2009) 10.5 — 1232 of 17 August 2009, by which the Commission recovered sums paid to the applicant pursuant to the EURO-THYMAIDE contract No LSHB-CT-2003-503410 relating to a project under the Sixth Framework Programme for Research and Technological Development.

The applicant puts forward five pleas in law in support of its application, alleging:

— infringement of the rights of the defence, in that the decision was taken without the Commission having considered the information in the applicant's detailed response to the final audit report;

— breach of the duty to state the reasons for the decision, as provided for under Article 253 EC, given the absence of essential information enabling the Commission's reasoning in the decision to be understood;

— errors of law and manifest errors of assessment of the facts inasmuch as the Commission refused eligible costs by adjusting the eligibility criteria for expenditure incurred pursuant to the contract, and erroneously dismissed conclusive evidence of such expenditure;

— infringement of Article 73(1) of the Financial Regulation, in that the claim at issue could not be regarded as 'certain, of a fixed amount and due', owing to the serious nature of the challenge mounted against it;

— infringement of the principle of legal certainty on account of the fact that the decision was taken on the basis of expenditure eligibility criteria which did not exist when the contract was signed.

Action brought on 6 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-447/09)

(2010/C 24/98)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the decision of 28 August 2009 relating to the set-off between the claim arising under contract FP7 239108 ICT — VAMDC/=PF=, and the Community's alleged claim on the applicant under the NEMAGENETAG contract;

— order the Commission to pay all the costs of the proceedings.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) seeks the annulment of the set-off measure contained in Decision BUDG/C3 D(2009) 10.5 — 1232 of 28 August 2009, by which the Commission recovered sums paid to the applicant pursuant to the NEMAGENETAG contract relating to a project under the Sixth Framework Programme for Research and Technological Development.

The applicant puts forward three pleas in law in support of its application, alleging:

— infringement of the rights of the defence, in that the decision was taken without the Commission having considered the information in the applicant's detailed response to the final audit report;

— errors of law and manifest errors of assessment of the facts which affected the decision and which led the Commission to refuse costs by adjusting the criteria for the assessment of eligible expenditure, and erroneously to dismiss conclusive evidence of expenditure incurred for the purposes of the project;

— infringement of Article 73(1) of the Financial Regulation, in that (1) the claim at issue could not be regarded as 'certain, of a fixed amount and due', owing to the serious nature of the challenge mounted against it; (2) the claims offset against each other could not be regarded as reciprocal, since one is collective and the other personal; and (3) the amount of pre-financing payable under the VAMDC contract was not due at the time of the adoption of the set-off measure.

Action brought on 4 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-448/09)

(2010/C 24/99)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare the action admissible and well founded;

— order the Commission to refund the amount allegedly receivable of EUR 110 102,26, together with interest on late payment at the statutory rate in accordance with Belgian law governing the contract, claimed by the Commission under the contract by its debit note of 29 June 2009 (Ref No 3230906067) and which gave rise to a set-off measure dated 17 August 2009 (Ref BUDG/C3 D(2009) 10.5 — 1232);

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) requests the Court to order the Commission to refund the amount receivable (EUR 110 102,26) referred to in debit note No 3230906067 of 29 June 2009, which is allegedly payable by the applicant under the EURO-THYMAIDE contract relating to a project under the Sixth Framework Programme for Research and Development, and which gave rise to a set-off measure dated 17 August 2009, together with interest on late payment.

The applicant puts forward three pleas in law in support of its application, alleging:

— failure to comply with the contractual criteria for justification of costs, in that the Commission failed to apply Article II.19.1 of the General Conditions of the EURO-THYMAIDE contract relating to eligible costs; and, in the alternative, with the obligation of good faith laid down by

Article 1134 of the Belgian Civil Code — by dismissing evidence of the direct costs of staff involved in the project, the evidential value of which was nevertheless obvious. This approach caused the Commission erroneously to reject certain direct personnel costs and to make adjustments which resulted in the disputed claim;

— the erroneous assessment of the *Provision pour Perte d'Emploi* (loss of employment provision; 'PPE') in the light of the criteria laid down by Articles II.19.1, II.19.2.c and II.20 of the General Conditions of the EURO-THYMAIDE contract, in so far as, contrary to its misleading name, PPE is a personnel cost associated with unemployment insurance that is indissociable from eligible personnel costs. By refusing to allow eligible costs to include amounts corresponding to the PPE levied against the pay of temporary CNRS staff involved in the project, the Commission infringed the requirements referred to above;

— the manifestly erroneous assessment of sick pay in the light of the eligibility criteria provided for under the contract, in that, contrary to Article II.19 of the General Conditions of the EURO-THYMAIDE contract, the Commission included in the costs deemed ineligible salaries paid during periods of sick leave to CNRS staff involved in the project.

Action brought on 6 November 2009 — Centre national de la recherche scientifique v Commission

(Case T-449/09)

(2010/C 24/100)

Language of the case: French

Parties

Applicant: Centre national de la recherche scientifique (Paris, France) (represented by: N. Lenoir, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare the action admissible and well founded;

— order the Commission to refund the sum of EUR 97 399,55 allegedly receivable and claimed by the Commission pursuant to the contract in its debit note of 6 July 2009 (Ref No 3230906573) which gave rise to the set-off measure of 28 August 2009 (Ref BUDG/C3 D2009 10.5 — 1232), together with interest on late payment at the statutory rate in accordance with Belgian law governing the contract;

— order the Commission to pay the costs.

Pleas in law and main arguments

By the present action, the Centre national de la recherche scientifique (CNRS) requests the Court to order the Commission to refund the amount receivable (EUR 97 399,55) referred to in debit note No 3230906573 of 6 July 2009, which is allegedly payable by the applicant under the NEMAGENETAG contract relating to a project under the Sixth Framework Programme for Research and Development, and which gave rise to a set-off measure dated 28 August 2009, together with interest on late payment.

The applicant puts forward two pleas in law in support of its application, alleging:

— failure to comply with the criteria for the definition and justification of eligible costs provided for in the NEMAGENETAG contract and with the principle of good faith in the implementation of agreements, thereby limiting, in some cases even depriving the applicant altogether of, the opportunity to adduce evidence of the proper performance of the contract;

— the erroneous assessment of the *Provision pour Perte d'Emploi* (loss of employment provision; 'PPE') in the light of the criteria laid down by Articles II.19.1, II.19.2.c and II.20 of the General Conditions of the NEMAGENETAG contract, in so far as, contrary to its misleading name, PPE is a personnel cost associated with unemployment insurance that is indissociable from eligible personnel costs. By refusing to allow eligible costs to include amounts corresponding to the PPE levied against the pay of temporary CNRS staff involved in the NEMAGENETAG project, the Commission infringed the requirements referred to above.

Action brought on 9 November 2009 — Wind v OHIM — Sanyang Industry (Wind)

(Case T-451/09)

(2010/C 24/101)

Language in which the application was lodged: English

Parties

Applicant: Harry Wind (Selfkant, Germany) (represented by: J. Sroka, lawyer)

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

Other party to the proceedings before the Board of Appeal: Sanyang Industry Co. Ltd (Hsinchu, Taiwan)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 September 2009 in case R 1470/2008-4; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark "Wind", for goods and services in classes 11, 12 and 37

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: German trade mark registration of the figurative mark "Wind", for services in class 37

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Dismissed the appeal

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 40/04 (which became Article 8(1)(b) of Council Regulation No 207/2009) as the Board of Appeal failed to conclude that there was similarity between the goods and services covered by the Community trade mark concerned.

Action brought on 7 November 2009 — Jiménez Sarmiento v OHIM — Robin and Others (Q)

(Case T-455/09)

(2010/C 24/102)

Language in which the application was lodged: Spanish

Parties

Applicant: Vicente J. Jiménez Sarmiento (Madrid, Spain) (represented by: P. Mª García-Cabrerizo del Santo, lawyer)

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

Other parties to the proceedings before the Board of Appeal of OHIM: Michel Robin (Lasnes, Belgium), Daniel Falzone (Waterloo, Belgium), Maxime Monseur (Tamines, Belgium)

Form of order sought

— Declare that, pursuant to Rule 70 implementing the Regulation on the Community trade mark, it is accepted that the period of four months for the submission of a written statement setting out the grounds of the administrative appeal which gives rise to this action expired on 16 May 2009, and consequently the submission made on 18 May 2009, that day being a Saturday, must be held to comply with the law.

— Alternatively, and in the event that the above claim is not accepted by the Court, declare that it is accepted that the applicant made an excusable error when calculating that period.

— If either of the above two claims is upheld, annul the decision of the Board of Appeal of OHIM in the case R0312/2009-4 dated 7 September 2009, declare that the written statement setting out the grounds for the administrative proceedings concerned was submitted in time, and order the Board of Appeal of OHIM to undertake an assessment of the substance of the case.

Pleas in law and main arguments

Applicant for a Community trade mark: Michel Robin, Daniel Falzone and Maxime Monseur.

Community trade mark concerned: Figurative mark consisting of the letter Q angled and with the lower part in bold (registration number 4 804 266) for goods in Classes 18, 25 and 28.

Proprietor of the mark or sign cited in the opposition proceedings: The applicant.

Mark or sign cited in opposition: Spanish figurative mark containing the word element 'quadrata' (No 1 770 312) for goods in Class 25.

Decision of the Opposition Division: Dismissal of the opposition as being inadmissible.

Decision of the Board of Appeal: Dismissal of the appeal as being inadmissible.

Pleas in law: Incorrect interpretation and application of Rule 70 of Regulation (EC) No 2868/95 of 13 December 1995 implementing the Regulation on the Community trade mark, departure by the defendant in the contested decision from its consistent practice, in circumstances of excusable error on the part of the applicant.

Action brought on 16 November 2009 — CheapFlights International v OHIM — Cheapflights (Cheapflights)

(Case T-460/09)

(2010/C 24/103)

Language in which the application was lodged: English

Parties

Applicant: CheapFlights International Ltd (Ballybofey, Ireland) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

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

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 August 2009 in case R 1356/2007-4;

— Dismiss the appeal filed by the other party to the proceedings before the Board of Appeal against the decision of the Opposition Division of the defendant of 22 June 2007 in opposition proceedings B 806 531;

— Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it decide to become an intervener in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark "Cheapflights", for goods and services in classes 9, 16, 35, 38, 39, 41, 42, 43 and 44

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Irish trade mark registration of the figurative sign "CheapFlights", for services in classes 35, 36, 38, 39, 41, 42, 43 and 44; Irish trade mark application of the word mark "CHEAPFLIGHTS", for services in classes 35, 39 and 43; Irish trade mark registration of the word mark "CHEAPFLIGHTS", for services in classes 38, 41, 42 and 44; Irish trade mark registration of the figurative sign "CheapFlights.ie", for service in classes 35, 39, 41, 42 and 43; International trade mark registration of the figurative sign "CheapFlights", for services in classes 35, 38, 39 and 42

Decision of the Opposition Division: Upheld the opposition partially

Decision of the Board of Appeal: Annulled the contested decision and rejected the opposition in its entirety

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was no likelihood of confusion between the trade marks concerned.

Action brought on 16 November 2009 — CheapFlights International v OHIM — Cheapflights (Cheapflights)

(Case T-461/09)

(2010/C 24/104)

Language in which the application was lodged: English

Parties

Applicant: CheapFlights International Ltd (Ballybofey, Ireland) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

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

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 August 2009 in case R 1607/2007-4;

— Dismiss the appeal filed by the other party to the proceedings before the Board of Appeal against the decision of the Opposition Division of the defendant of 10 August 2007 in opposition proceedings B 849 150;

— Order the defendant to pay the costs, including those incurred by the applicant before the Board of Appeal; and

— Order the other party to the proceedings before the Board of Appeal to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal, should it decide to become an intervener in this case.

Pleas in law and main arguments

Applicant for the Community trade mark: The other party to the proceedings before the Board of Appeal

Community trade mark concerned: The figurative mark in black and white "Cheapflights", for services in classes 38, 39, 41, 42, 43 and 44

Proprietor of the mark or sign cited in the opposition proceedings: The applicant

Mark or sign cited: Irish trade mark registration of the figurative sign in colour "CheapFlights", for services in classes 35, 36, 38, 39, 41, 42, 43 and 44; Irish trade mark application of the word mark "CHEAPFLIGHTS", for services in classes 35, 39 and 43; Irish trade mark registration of the word mark "CHEAP-FLIGHTS", for services in classes 38, 41, 42 and 44; Irish trade mark registration of the figurative sign "CheapFlights.ie", for service in classes 35, 39, 41, 42 and 43; International trade mark registration of the figurative sign "CheapFlights", for services in classes 35, 38, 39 and 42

Decision of the Opposition Division: Upheld the opposition in its entirety

Decision of the Board of Appeal: Annulled the contested decision and rejected the opposition in its entirety

Pleas in law: Infringement of Articles 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was no likelihood of confusion between the trade marks concerned.

Action brought on 19 November 2009 — Jurašinović v Council

(Case T-465/09)

(2010/C 24/105)

Language of the case: French

Parties

Applicant: Ivan Jurašinović (Angers, France) (represented by: M. Jarry, lawyer)

Defendant: Council of the European Union

Form of order sought

— Annul the decision of 22 September 2009 by which the applicant was granted only partial access to the following documents: reports of observers of the European Union in Croatia on the Knin zone from 1 August to 31 August 1995;

— order the Council of the European Union — Secretariat-General to grant electronic access to all parts of the documents sought;

— order the Council of the European Union to pay the applicant EUR 2 000 exclusive of tax or EUR 2 392 inclusive of tax in procedural indemnity with interest, at the rate determined by the ECB in respect of the day the application was lodged.

Pleas in law and main arguments

By the present action, the applicant seeks annulment of the decision of 22 September 2009 refusing to grant him full access to the reports of the European Union observers in Croatia on the Knin zone from 1 August to 31 August 1995.

The applicant raises three pleas in support of his action.

— disclosure would not undermine the protection of the public interest as regards international relations in accordance with Article 4(1) of Regulation No 1049/2001 [1] in so far as:

  — no specific legal protection may apply to the documents at issue;

  — even supposing that specific protection may apply to the documents sought, Article 4(7) of Regulation No 1049/2001 provides that 'he exceptions as laid down in paragraphs 1 to 3 shall only apply for the period during which protection is justified on the basis of the content of the document.' Half of the maximum period of protection laid down in Article 4(7) has already passed, which justifies the grant of access to the documents sought;

  — finally, the documents sought are not sensitive documents within the meaning of Article 9 of Regulation No 1049/2001;

— disclosure would not undermine public security in accordance with Article 4(1) of Regulation No 1049/200 in so far as:

— whether third parties have provided 'confidential' information for use in those documents is irrelevant, since Regulation No 1049/2001 does not allow an institution to refuse access to a document in order to protect a hypothetical 'third party';

— the Council's argument that it seeks to 'protect' the physical well-being of observers, witnesses and other sources constitutes a desire to protect the private interests of those persons and does not affect public security;

— in order to reconcile its concern for the protection of the identity of certain persons with the need to satisfy the interest of the public, the Council is able, always, to limit public access to the documents sought by deleting from those documents references that would allow identification of those 'third parties';

— the documents sought have previously been disclosed.

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

Action brought on 23 November 2009 — Comercial Losan v OHIM — McDonald's International Property (Mc. Baby)

(Case T-466/09)

(2010/C 24/106)

Language in which the application was lodged: Spanish

Parties

Applicant: Comercial Losan (Zaragoza, Spain) (represented by: A. Vela Ballesteros, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: McDonald's International Property Co. Ltd (Delaware, United States)

Form of order sought

— uphold the action brought against the decision of the Board of Appeal of 1 September 2009 — R 1706/2008-1 Mc Baby/Mc Kids in the opposition proceedings No B 1049362 (Community trade mark application 4 441 393), allow registration of the Community trade mark applied for, and order the opposing party to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Comercial Losan

Community trade mark concerned: Figurative mark containing the word element 'Mc. Baby' (registration application No 4 741 393) for goods and services in Classes 25, 35 and 39

Proprietor of the mark or sign cited in the opposition proceedings: McDonald's International Property Co. Ltd.

Mark or sign cited in opposition: Community figurative mark containing the word element 'McKids' (mark No 3 207 354) for goods in classes 16, 25 and 28; Community word mark 'McDONALD'S' (mark No 62 497) for goods and services in Classes 25, 28, 29, 30, 31, 32, 35, 41 and 42; and Community figurative mark containing the word element 'McDONALD'S' (mark No 62 521) for goods and services in Classes 25, 28, 29, 30, 31, 32, 35, 41 and 42

Decision of the Opposition Division: Partial upholding of the opposition.

Decision of the Board of Appeal: Partial upholding of the appeal.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 40/94, replaced by Regulation No 207/2009.

Action brought on 19 November 2009 — Stelzer v Commission

(Case T-467/09)

(2010/C 24/107)

Language of the case: German

Parties

Applicant: Dierk Stelzer (Berlin, Germany) (represented by: F. Weiland, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decisions in the form of refusals by the Directorate-General Environment of the Commission of 6 August 2009 and the Secretariat-General of the Commission of 29 October 2009 (correct date must be 29 September 2009);

— order the defendant to pay the applicant's costs incurred out of court.

Pleas in law and main arguments

The applicant contests in particular the Commission decision dated 29 October 2009, by which his second application for inspection of the compliance study on the transposition of Directive 2003/35/EC [1] was partially rejected.

In support of its action the applicant claims that the reasons invoked by the defendant for the rejection of access to the document applied for, based on protection of the purpose of investigations (Article 4(2), third indent, of Regulation [EC] No 1049/2001 [2]) and on protection of the decision-making process (Article 4(3) of Regulation No 1049/2001) were erroneous. The applicant also claims that the request for partial access to the document applied for under Article 4(6) of Regulation No 1049/2001 was wrongly rejected. Furthermore there is an overwhelming public interest in the dissemination of the study in question. Finally the applicant complains that the defendant failed to comply with the obligation to state reasons.

(1) Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17).

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

Action brought on 24 November 2009 — JSK International Architekten und Ingenieure v ECB

(Case T-468/09)

(2010/C 24/108)

Language of the case: German

Parties

Applicant: JSK International Architekten und Ingenieure GmbH (Frankfurt am Main, Germany) (represented by: J. Steiff and K. Heuvels, lawyers)

Defendant: European Central Bank

Form of order sought

— Annul the ECB's award decision of 6 August 2009 and the decision on the complaint of 14 September 2009 by the body within the ECB responsible for review proceedings;

— declare that (i) the annulled award decision is to be replaced by the award of the contract to the applicant, (ii) in the alternative, that the procedure by which the contract was awarded is to be repeated from the moment tenderers were invited to submit bids, this time to include JSK's bid, (iii) in the final alternative, to repeat the procedure by which the contract was awarded from the very beginning;

— only in the alternative — and only if, as is not likely, the applications under 1 and 2 above are dismissed — award the applicant damages in the amount of its positive interest (lost profit), provisionally estimated to amount to EUR 900 000; in the alternative, in the amount of its negative interest (cost of preparing the tender), provisionally estimated to amount to EUR 80 000;

— order the defendant to pay the costs of the proceedings and the extrajudicial costs necessarily incurred by the applicant in taking the appropriate legal action (lawyers' fees and expenses);

— grant the applicant unrestricted access to the files, which has been denied to date.

Pleas in law and main arguments

By its claims, the applicant takes issue with, on the one hand, the decision of the ECB's award committee of 6 August 2009 to reject the bid submitted by the applicant in response to the call for tenders in respect of coordination and site management tasks relating to the new ECB building in Frankfurt am Main (T109 Bauleiter), and, on the other hand, the decision of the body within the ECB responsible for review proceedings of 14 September 2009 to reject the applicant's complaint brought against that award decision. In the alternative, the applicant has applied for damages.

In support of its application, the applicant submits, first, that the award decision contains errors because of a conflict of interests. In this respect, the applicant alleges that there has been an infringement of the principle of good administration within the meaning of Article 41 of the Charter of Fundamental Rights of the European Union.

Second, the applicant submits that the failure to consider its bid constitutes an error of law and takes issue with the fact that its bid was excluded on grounds of inadequacy and low quality.

Finally, the applicant claims that procedural rights were infringed with respect to transparency and the right to legal protection, such as an infringement of the right of access to the file.

Action brought on 23 November 2009 — Hellenic Republic v Commission

(Case T-469/09)

(2010/C 24/109)

Language of the case: Greek

Parties

Applicant: Hellenic Republic (represented by: I. Khalkias and S. Papaioannou)

Defendant: European Commission

Form of order sought

— annul the contested Commission decision in its entirety;

— order the Commission to pay the costs.

Pleas in law and main arguments

In its action contesting Commission Decision C(2009) 7044 final of 24 September 2009 excluding from Community financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2009 L 257, p. 28) in so far as the decision concerns financial corrections to its detriment, the Hellenic Republic puts forward the following two pleas for annulment.

By the first plea for annulment, concerning the fruit and vegetable (tomato) processing sector, the applicant pleads incorrect interpretation and application of Article 28(1)(f), Article 28(2), Article 31(1) and (2) and Article 3(2) of Regulation (EC) No 1535/2003 ([1]) and of the guidelines AGRI VI 5330/97, 17933/2000 and 63983/2002 concerning financial corrections, given that in that sector all the key controls were effected satisfactorily and there were deficiencies only in ancillary secondary controls.

By the second plea for annulment, concerning the public storage of rice, the applicant submits that there is no valid legal basis for imposing the correction, since the Commission misinterpreted Articles 4 and 6 of Regulation (EC) No 2148/1996, ([2]) or in the alternative that the principle of proportionality has been infringed.

([1]) Commission Regulation (EC) No 1535/2003 of 29 August 2003 laying down detailed rules for applying Council Regulation (EC) No 2201/96 as regards the aid scheme for products processed from fruit and vegetables (OJ 2003 L 218, p. 14).

([2]) Commission Regulation (EC) No 2148/96 of 8 November 1996 laying down rules for evaluating and monitoring public intervention stocks of agricultural products (OJ 1996 L 288, p. 6).

Action brought on 30 November 2009 — medi v OHIM (medi)

(Case T-470/09)

(2010/C 24/110)

Language in which the application was lodged: German

Parties

Applicant: medi GmbH & Co. KG (Bayreuth, Germany) (represented by H. Lindner und D. Terheggen, lawyers)

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

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 1 October 2009 in Case R 692/2008-4, insofar as the complaint was dismissed;

— annul OHIM's Decision of 26 February 2008 to refuse Community trade mark application No 5 378 021;

— allow publication in full of Community trade mark application No 5 378 021;

— order OHIM to pay the costs of the proceedings.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'medi' for goods and services in Classes 1, 3, 5, 9, 10, 17, 35, 38, 39, 41, 42 and 44 (Application No 5 378 021)

Decision of the Examiner: Refusal of the application

Decision of the Board of Appeal: Partial annulment of the Examiner's Decision

Pleas in law: Wrong application of Article 7(1)(b) of Regulation No 207/2009, [1] because the mark concerned does have the distinctive character required

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

Action brought on 27 November 2009 — Oetker Nahrungsmittel v OHIM — Bonfait (Buonfatti)

(Case T-471/09)

(2010/C 24/111)

Language in which the application was lodged: German

Parties

Applicant: Dr. August Oetker Nahrungsmittel KG (Bielefeld, Germany) (represented by: F. Graf von Stosch, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bonfait BV

Form of order sought

— Annul the Decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 2 October 2009 in Case R 340/2007-4 concerning opposition No B 871 121;

— order the Office for Harmonisation in the Internal Market to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for a Community trade mark: Oetker Nahrungsmittel

Community trade mark concerned: Word mark 'Buonfatti' for goods in Classes 29 and 30 (Application No 3 939 915)

Proprietor of the mark or sign cited in the opposition proceedings: Bonfait BV

Mark or sign cited in opposition: in particular, the Benelux word mark 'Bonfait' No 393 133 and the figurative Community trade mark 'Bonfait' No 648 816 for goods in Classes 29 and 30

Decision of the Opposition Division: Rejection of the opposition

Decision of the Board of Appeal: Annulment of the decision of the Opposition Decision and refusal of the application to register

Pleas in law: Infringement of Article 8(1)(b) of Regulation No 207/2009, [1] since there is no likelihood of confusion between the conflicting trade marks

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

Action brought on 30 November 2009 — SP v Commission

(Case T-472/09)

(2010/C 24/112)

Language of the case: Italian

Parties

Applicant: SP SpA (Brescia, Italy) (represented by: G. Belotti, lawyer)

Defendant(s): European Commission

Form of order sought

— Declare the contested decision non-existent and/or null and void.

Pleas in law and main arguments

By decision of 17 September 2002, the Commission concluded a procedure initiated as early as October 2000 entailing a number of unannounced inspections at the premises of a number of Italian steel undertakings and accused them of participating in an illegal cartel for the purpose of Article 65 of the ECSC Treaty, namely between 6 December 1989 and July 2000. That decision was challenged by all the undertakings to which it was addressed, including the applicant.

That action was granted on the basis that the Commission had adopted the contested decision using as a legal basis Article 65 CS, even though the latter was no longer in force at the time when the decision was adopted, the ECSC Treaty having expired five years previously.

By the decision which is the subject of the present proceedings, the Commission has repeated the claims alleging infringement set out in the initial decision, amending the legal basis of the penalty sought but not the legal basis of the alleged infringement, which remains Article 65 ECSC.

The applicant puts forward a number of pleas in support of its action, which include the following:

1. The incomplete nature of the decision and infringement of essential procedural requirements, insofar as the decision was notified without its annexes and was, moreover, adopted by the College of Commissioners in an incomplete form.

2. The Commission lacks competence to allege infringement under Article 65 of the ECSC Treaty once the treaty has expired.

3. Infringement of and misapplication of the law in Article 23 of Regulation EC No 1/2003, ([1]) since that provision is intended, first, to impose penalties solely in respect of infringements of the EC Treaty and not the ECSC Treaty and, second, to impose penalties solely in respect of active undertakings which produced a turnover in the preceding business year. It should be pointed out in this connection that the applicant, a company that has gone into liquidation, has demonstrated that it did not achieve any turnover in 2008.

4. Misuse of powers and abuse of procedure in that the Commission continued with the procedure initiated under the aegis of the ECSC rules, following a procedure under the EC Treaty, under which it was not so permitted.

5. Partiality of the administrative procedures and failure to state reasons, in that the Commission omitted arguments that had been included in the file which indicated that the alleged cartel did not exist and/or, in any event, was not effective and overlooked information on the file which demonstrated that the applicant did not participate in some aspects of the cartel.

6. Serious breach of the rights of the defence insofar as the decision was not preceded by a fresh statement of objections.

7. Infringement and misapplication of the law, in that the amount of the basic fine was unduly increased, in particular as regards the increase for duration and the increase for deterrence.

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

Action brought on 26 November 2009 — Matkompaniet v OHIM — DF World of Spices (KATOZ)

(Case T-473/09)

(2010/C 24/113)

Language in which the application was lodged: English

Parties

Applicant: Matkompaniet AB (Borås, Sweden) (represented by: J. Gulliksson, lawyer)

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

Other party to the proceedings before the Board of Appeal: DF World of Spices GmbH (Dissen, Germany)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 September 2009 in case R 1023/2008-2;

— Order the defendant to bear the costs incurred both in these proceedings and in the proceedings before it.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark "KATOZ", for goods in classes 29 and 30

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: German trade mark registration of the figurative mark "KATTUS", for goods in classes 29 and 30

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Annulled the decision of the Opposition Division

Pleas in law:

Infringement of Article 8(1)(b) of Council Regulation No 207/2009 as the Board of Appeal wrongly held that there was a likelihood of confusion between the trade marks concerned.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER)

(Case T-475/09)

(2010/C 24/114)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Itailia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 24 September 2009 — R 500/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter Italia S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER' (Application No 4 934 147) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition was upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER)

(Case T-476/09)

(2010/C 24/115)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 24 September 2009 — R 1006/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter Italia S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER' (Application No 4 934 212) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER)

(Case T-477/09)

(2010/C 24/116)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 24 September 2009 — R 1008/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER' (Application No 4 934 121) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER)

(Case T-478/09)

(2010/C 24/117)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 24 September 2009 — R 1009/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER' (Application No 4 934 501) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTER' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTER' (No 989 046) in respect of goods in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER Garden)

(Case T-479/09)

(2010/C 24/118)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 24 September 2009 — R 1044/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter Italia S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER Garden' (Application No 4 935 144) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTER' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTER' (No 989 046) in respect of services in Class 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICOCENTER)

(Case T-480/09)

(2010/C 24/119)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 28 September 2009 — R 1045/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER' (Application No 4 935 185) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (maxi BRICOCENTRO)

(Case T-481/09)

(2010/C 24/120)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 28 September 2009 – R 1046/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'maxi BRICOCENTER' (Application No 4 939 005) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (BRICO CENTER Cittá)

(Case T-482/09)

(2010/C 24/121)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 28 September 2009 — R 1047/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'BRICOCENTER Città' (Application No 4 939 302) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) for services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 30 November 2009 — ATB Norte v OHIM — Bricocenter Italia (Affiliato BRICO CENTER)

(Case T-483/09)

(2010/C 24/122)

Language in which the application was lodged: Spanish

Parties

Applicant: ATB Norte, SL (Burgos, Spain) (represented by: P. López Ronda, G. Macías Bonilla, H.L. Curtis-Oliver and G. Marín Raigal, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Bricocenter Italia Srl (Rozzano Milanofiori (Milan), Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM of 28 September 2009 — R 1048/2008-4.

— Order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Bricocenter S.r.l.

Community trade mark concerned: Figurative mark containing the word element 'Affiliato BRICOCENTER' (Application No 4 939 344) in respect of services in Class 35.

Proprietor of the mark or sign cited in the opposition proceedings: ATB Norte, SL.

Mark or sign cited in opposition: Figurative Community trade marks containing the word elements 'CENTROS DE BRICOLAGE BRICOCENTRO' (No 3 262 623) and 'ATB CENTROS DE BRICOLAGE BRICOCENTRO' (No 989 046) in respect of services in Classes 35, 37 and 39.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Opposition Division's decision annulled and the opposition rejected in its entirety.

Pleas in law: Incorrect interpretation and application of Article 8(1)(b) of Regulation No 207/2009.

Order of the Court of First Instance of 27 November 2009 — Sellafield v Commission

(Case T-121/06) ([1])

(2010/C 24/123)

Language of the case: English

The President of the Court of First Instance (Seventh Chamber) has ordered that the case be removed from the register.

([1]) C 154, 1.7.2006.

Order of the Court of First Instance of 23 November 2009 — Brilliant Hotelsoftware v OHIM (BRILLIANT)

(Case T-337/07) ([1])

(2010/C 24/124)

Language of the case: German

The President of the Court of First Instance (Third Chamber) has ordered that the case be removed from the register.

([1]) C 269, 10.11.2007.

Order of the Court of First Instance of 30 November 2009 — RedEnvelope v OHIM — Red Letter Days (redENVELOPE)

(Joined Cases T-415/07 and T-416/07) ([1])

(2010/C 24/125)

Language of the case: English

The President of the Court of First Instance (Sixth Chamber) has ordered that the joined cases be removed from the register.

([1]) C 8, 12.1.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Second Chamber) of 10 September 2009 — Behmer v Parliament

(Case F-47/07) [1]

(Promotion — 2005 Promotions procedure — Decision on Policy on promotion and on career planning — Procedure for the award of promotion points in the European Parliament — Unlawfulness of instructions governing that procedure — Consultation of the Staff Regulations Committee — Comparative examination of the merits — Discrimination against staff representatives)

(2010/C 24/126)

Language of the case: French

Parties

Applicant: Joachim Behmer (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: European Parliament (represented by: C. Burgos and R. Ignătescu, Agents)

Re:

First, annulment of the decision of the appointing authority of the Parliament not to appoint the applicant to grade A*13 in the 2005 promotions procedure and, second, declaration of the unlawfulness of the decision of the Bureau of the Parliament relating to the 'Policy on promotion and on career planning' of 6 July 2005 and of the 'Implementing measures relating to the award of merit points and to promotion' of 25 July 2005.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

[1] OJ C 170, 21.7.2007, p. 43.

Judgment of the Civil Service Tribunal (Second Chamber) of 29 September 2009 — O v Commission

(Joined Cases F-69/07 and F-60/08) [1]

(Staff case — Members of the Contractual staff — Article 88 of the CEOS — Stable employment — Article 100 of the CEOS — Medical proviso — Article 39 EC — Free movement of workers)

(2010/C 24/127)

Language of the case: French

Parties

Applicant: O (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Commission (represented by: D. Martin and L. Lozano Palacios, Agents)

Intervener: Council of the European Union (represented by: initially, in Case F-69/07, I. Šulce and M. Simm, Agents, and, in Case F-60/08, I. Šulce and K. Zieleśkiewicz, Agents, and, subsequently, in both cases, by K. Zieleśkiewicz and M. Bauer, Agents.

Re:

F-69/07: Annulment of the Commission's decisions fixing the conditions of employment of the applicant as a member of the contract staff in so far as they, first, provide for the application of the proviso laid down in Article 100 of the CEOS and in Article 1 of Annex VIII to the Staff Regulations, and, second, limit the duration of the contract to the period from 16 September 2006 to 15 September 2009.

F-60/08: Annulment of the decision of the Commission to apply to the applicant, following the opinion of the Invalidity Committee, the proviso laid down in Article 100 of the CEOS.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Commission of the European Communities of 14 September 2006 in so far as it imposes a medical proviso in respect of the applicant;*

2. *Dismisses Case F-69/07 O v Commission for the remainder as unfounded;*

3. *Dismisses Case F-60/08 O v Commission as inadmissible;*

4. *In Case F-69/07, the European Commission is ordered to bear its own costs and to pay half of the applicant's costs;*

5. *The applicant is ordered to bear half its costs in Case F-69/07 and to bear its own costs and to pay those of the European Commission in Case F-60/08.*

([1]) F-69/07: OJ C 235, 6.10.2007, p. 29.
F-60/08: OJ C 223 of 30.8.2008, p. 63.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Zangerl-Posselt v Commission

(Case F-83/07) ([1])

(Staff case — Open competition — Candidate not admitted to the practical and oral tests — Qualifications required — Concept of higher education — Age discrimination)

(2010/C 24/128)

Language of the case: German

Parties

Applicant: Brigitte Zangerl-Posselt (Merzig, Germany) (represented by: S. Paulmann, lawyer)

Defendant: European Commission (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the decision of 18 June 2007 of the selection board of the competition for the establishment of a reserve list for assistants having as their main language German for secretarial duties (AST 1) not to admit the applicant to the practical and oral tests

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the European Commission, in addition to bearing its own costs, to pay two thirds of those incurred by Ms Zangerl-Posselt;*

3. *Orders Ms Zangerl-Posselt to bear one third of her costs.*

([1]) OJ C 235, 6.10.2007, p. 32.

Judgment of the Civil Service Tribunal (Second Chamber) of 24 September 2009 — Rebizant, Vlandas and Vocino v Commission

(Case F-94/07) ([1])

(Staff case — Officials — Promotion — 2006 procedure — Multiplier rate — Article 6(2) of the Staff Regulations — Article 9 of Annex XIII to the Staff Regulations — Promotion threshold)

(2010/C 24/129)

Language of the case: French

Parties

Applicants: Jean Rebizant (Karlsruhe, Germany), Georges Vlandas (Brussels, Belgium) and Vinceno Vocino (Varese, Italy) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and G. Berscheid, Agents)

Re:

First, annulment of the decision not to promote the applicants to grade AD13 under the 2006 promotion procedure and, second, declaration that the decision setting the promotion thresholds applicable to officials under the "Research" and "Joint Research Centre" budgets is illegal.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 283, 24.11.2007, p. 45.

Judgment of the Civil Service Tribunal (Second Chamber) of 29 September 2009 — Kerstens v Commission

(Case F-102/07) [1]

(Staff case — Officials — Promotion — 2004, 2005 and 2006 Promotions procedures — Award of priority points — Priority points awarded by directors general — Priority points in recognition of work carried out in the interests of the institution — Principle of non-discrimination — Duty to state reasons)

(2010/C 24/130)

Language of the case: French

Parties

Applicant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Defendant: European Commission (represented by: K. Herrmann and M. Velardo, initially, and C. Berardis-Kayser and G. Berscheid, subsequently, Agents)

Re:

Annulment of various Commission decisions concerning the award to the applicant of directorate general priority points (PPDG) and/or priority points in recognition of additional tasks carried out in the interests of the institution (PPII) under the 2004, 2005 and 2006 promotion exercises.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

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[1] OJ C 297, 8.12.2007, p. 49.

Judgment of the Civil Service Tribunal (Second Chamber) of 29 September 2009 — Rainer Wenning v European Police Office (Europol)

(Case F-114/07) [1]

(Civil Service — Europol staff — Renewal of contract of a member of the contract staff of Europol — Article 6 of the Europol Staff Regulations — Assessment report)

(2010/C 24/131)

Language of the case: English

Parties

Applicant: Rainer Wenning (The Hague, Netherlands) (represented by: G. Vandersanden and C. Ronzi, lawyers and subsequently by L. Levi, lawyer)

Defendant: European Police Office (Europol) (represented by: B. Exterkate and D. El Khoury, acting as Agents, assisted by B. Wägenbaur and R. Van der Hout, lawyers, and subsequently by D. El Khoury and D. Neumann, acting as Agents, assisted by B. Wägenbaur and R. Van der Hout, lawyers)

Re:

Annulment of the decision of Europol of 21 December 2006 not to renew the applicant's contract and not to reinstate him, and an order that Europol renew the applicant's contract for a period of 4 years from 1 October 2007 and pay damages

Operative part of the judgment

The Tribunal:

1. *Dismisses the action.*

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

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[1] OJ C 315, 22.12.2007, p. 47.

Judgment of the Civil Service Tribunal (Second Chamber) of 10 September 2009 — Behmer v Parliament

(Case F-124/07) [1]

(Promotion — 2006 promotion exercise — Comparative examination of the merits)

(2010/C 24/132)

Language of the case: French

Parties

Applicant: Joachim Behmer (Brussels, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: European Parliament (represented by: C. Burgos and R. Ignătescu, acting as Agents)

Re:

Annulment, first, of the decision of the Appointing Authority of the Parliament to allocate two promotion points to the applicant for 2005 and, second, of the decision to not promote the applicant to grade AD 13 for the 2006 promotion exercise.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the parties to bear their own costs.*

([1]) OJ C 22, 26.1.2008, p. 56.

Judgment of the Civil Service Tribunal (Second Chamber) of 29 September 2009 — Hau v Parliament

(Case F-125/07) ([1])

(Staff case — Officials — Promotion — 2006 promotion exercise — Non-inclusion on the list of promoted officials — Comparative examination of the merits — Relevant threshold — Failure to take into account the fact that the official concerned was included in the reserve)

(2010/C 24/133)

Language of the case: French

Parties

Applicant: Armin Hau (Luxembourg, Luxembourg) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament (represented by: K. Zejdová and S. Seyr, acting as Agents)

Re:

First, annulment of the decision of the Appointing Authority to not promote the applicant to grade B*7 for the 2006 promotion exercise and second, an application for the Appointing Authority to produce the documents concerning the comparative examination of the merits for that promotion.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Parliament, published on 21 November 2006, to not include Mr Hau on the list of officials promoted from grade B*6 to grade B*7 for the 2006 promotion exercise;*

2. *Orders the European Parliament to pay the costs.*

([1]) OJ C 79, 29.3.2008, p. 37.

Judgment of the Civil Service Tribunal (Third Chamber) of 16 September 2009 — Vinci v European Central Bank

(Case F-130/07) ([1])

(Staff case — Staff of the ECB — Allegedly unlawful treatment of medical data — Medical visit imposed)

(2010/C 24/134)

Language of the case: German

Parties

Applicant: Vinci (Schöneck, Germany) (represented by: B. Karthaus, lawyer)

Defendant: European Central Bank (represented by: F. Malfrère and F. Feyerbacher, Agents, assisted by H.-G. Kamann)

Re:

Application for a declaration that the registration of documents containing medical data is unlawful and for annulment of the decision of the ECB refusing, firstly, to erase the personal data derived from those documents, and secondly, ordering the applicant to have a medical examination, and an application for compensation for the non-material damage allegedly suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

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

([1]) OJ C 8, 12.1.2008, p. 32.

Judgment of the Civil Service Tribunal (Second Chamber) of 29 September 2009 — Aparicio, Simon and Others v Commission

(Joined Cases F-20/08, F-34/08 and F-75/08) ([1])

(Staff case — Contract staff — Recruitment — CAST 27/Relex selection procedure — Non-inclusion in the database — Neutralisation of questions — Verbal and numerical reasoning test — Equal treatment)

(2010/C 24/135)

Language of the case: French

Parties

Applicants: Jorge Aparicio (Antiguo Cuscatlan, El Salvador) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers) (Case F-20/08)

and

Anne Simon (Nouackhott, Mauritania) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E.Marchal, lawyers) (Case F-34/08)

and

Jorge Aparicio, (Antiguo Cuscatlan, El Salvador) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis, E. Marchal, lawyers) (Case F-75/08)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the decision of EPSO not to include the applicants' names on the list of successful candidates and in the database for the CAST 27/Relex recruitment procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the actions in F-20/08, F-34/08 and F-75/08;*

2. *Orders Mr Aparicio and the other applicants whose names are listed in the Annex under Nos 1 to 18 to pay the costs in Case F-20/08 and nineteen forty-sixths of the costs in Case F-75/08. Orders Ms Simon to pay the costs in Case F-34/08 and one forty-sixth of the costs in Case F-75/08. Orders the applicants whose names are listed in the Annex under Nos 19 to 40 and 42 to 46 to pay twenty-six forty-sixths of the costs in Case F-75/08.*

([1]) F-20/08: OJ C 92, 12.4.2008, p. 52.
F-34/08: OJ C 116, 9.5.2008, p. 36.
F-75/08: OJ C 285, 8.11.2008, p. 56.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — De Nicola v European Investment Bank

(Case F-55/08) ([1])

(Staff case — Staff of the European Investment Bank — Assessment — Promotion — Sickness insurance — Repayment of medical expenses — Psychological harassment — Duty to have regard to the welfare of officials — Action for damages — Jurisdiction of the Tribunal — Admissibility)

(2010/C 24/136)

Language of the case: Italian

Parties

Applicant: Carlo De Nicola (Strassen, Luxembourg) (represented by: L. Isola, lawyer)

Defendant: European Investment Bank (represented by: G. Nuvoli and F. Martin, Agents, assisted by d'A. Dal Ferro, lawyer)

Re:

First, annulment, in part, of the decision of the Appeals Committee concerning the assessment of the applicant for 2006 and, second, a declaration that the applicant has been the victim of psychological harassment and an order that the defendant desist from such conduct and compensate the non-material and material damage suffered.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

([1]) OJ C 209, 15.8.2008, p. 73.

Judgment of the Civil Service Tribunal (First Chamber) of 19 November 2009 — N v Parliament

(Case F-71/08) ([1])

(Staff case — Officials — Appraisal — Staff report — Setting of objectives — Manifest error of assessment — Admissibility — Act which does not adversely affect an official)

(2010/C 24/137)

Language of the case: French

Parties

Applicant: N (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament (represented by: K. Zejdová, R. Ignătescu and S. Seyr, acting as Agents)

Re:

Annulment of the applicant's staff report for the period from 16/8/2006 to 31/12/2006.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the Secretary General of the European Parliament of 12 September 2007 adopting N's definitive staff report for the period from 16 August 2006 to 31 December 2006;*

2. *Rejects the remainder of the application;*

3. *Orders the European Parliament to pay the costs.*

([1]) OJ C 272, 25.10.2008, p. 51.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Wenig v Commission

(Case F-80/08) [1]

(Staff cases — Officials — Disciplinary procedure — Suspension of an official — Withholding of salary — Allegation of serious fault — Rights of the defence — Powers — Failure to publish a delegation of powers — Author of the contested measure lacking powers)

(2010/C 24/138)

Language of the case: French

Parties

Applicant: Fritz Harald Wenig (Woluwé-Saint-Pierre, Belgium) (represented by: G.-A. Dal, D. Voillemot, D. Bosquet and S. Woog, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and D. Martin, Agents)

Re:

Annulment of the Commission's decision to suspend the applicant and to order EUR 1 000 per month to be withheld from his remuneration.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 18 September 2008 by which the Commission of the European Communities, pursuant to Articles 23 and 24 of Annex IX to the Staff Regulations of Officials of the European Communities, suspended Mr Wenig for an indefinite period and ordered an amount of EUR 1 000 per month to be withheld from his remuneration for a maximum period of six months;*

2. *Orders the Commission of the European Communities to pay the costs of the main proceedings;*

3. *Orders each party to bear their own costs in the application for interim measures.*

[1] OJ C 313, 6.12.2008, p. 59.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Voslamber v Commission

(Case F-86/08) [1]

(Staff case — Officials — Social Security — Joint Sickness Insurance Scheme — Spouse of a former official — Circumscribed powers — Article 13 of the Rules on Sickness Insurance for Officials of the European Communities)

(2010/C 24/139)

Language of the case: German

Parties

Applicant: Dietrich Voslamber (Freiburg, Germany) (represented by: L. Thielen, lawyer)

Defendant: European Commission (represented by: D. Martin and B. Eggers, Agents)

Re:

Annulment of the Commission's decision of 9 July 2008, rejecting the applicant's application for primary sickness insurance cover for his spouse pursuant to the Rules on Sickness Insurance for Officials of the European Communities.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Dismisses the forms of order sought by the European Commission submitted pursuant to Article 94(a) of the Rules of Procedure;*

3. *Orders the European Commission, in addition to bearing its own costs, to pay two thirds of the costs of Mr Voslamber;*

4. *Orders Mr Voslamber to bear one third of his costs.*

[1] OJ C 327, 20.12.2008, p. 43.

Judgment of the Civil Service Tribunal (First Chamber) of 10 November 2009 — N v European Parliament

(Case F-93/08) [1]

(Staff case — Officials — Reports — Staff report — Action for annulment — Admissibility — Statement of reasons — Manifest error of assessment — Definition of targets to be achieved)

(2010/C 24/140)

Language of the case: French

Parties

Applicant: N (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: European Parliament (represented by: K. Zejdová, R. Ignătescu and S. Seyr, Agents)

Re:

Annulment of the applicant's staff report for the period from 1 January 2007 to 30 April 2007.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders N to pay all the costs.*

[1] OJ C 44, 21.2.2009, p. 75.

Judgment of the Civil Service Tribunal (First Chamber) of 17 November 2009 — Di Prospero v Commission

(Case F-99/08) [1]

(Staff case — Open Competition — Anti-fraud sector — Competition notice EPSO/AD/116/08 and EPSO/AD/117/08 — Lack of possibility for candidates to apply for several open competitions simultaneously — Refusal to admit the applicant to open competition EPSO/AD/117/08)

(2010/C 24/141)

Language of the case: French

Parties

Applicant: Rita Di Prospero (Uccle, Belgium) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and B. Eggers, acting as Agents)

Re:

Annulment of EPSO's decision to not admit the applicant to open competition EPSO/AD/117/08.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Personnel Selection Office (EPSO) to not allow Mrs Di Prospero to apply for open competition EPSO/AD/117/08;*

2. *Orders the Commission of the European Communities to bear all of the costs.*

[1] OJ C 69, 21.3.2009, p. 54.

Judgment of the Civil Service Tribunal (First Chamber) of 25 November 2009 — Putterie-de-Beukelaer v Commission

(Case F-1/09) [1]

(Civil service — Officials — Promotion — Attestation procedure — Assessment of potential)

(2010/C 24/142)

Language of the case: French

Parties

Applicant: Françoise Putterie-de-Beukelaer (Brussels, Belgium) (represented by: É. Boigelot, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, acting as Agents)

Re:

Annulment of the decision not to admit the applicant to the 2007 attestation procedure.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Putterie-de-Beukelaer to pay the costs.*

[1] OJ C 55, 7.3.2009, p. 53.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Roberto Ridolfi v Commission of the European Communities

(Case F-3/09) [1]

(Civil service — Officials — Officials posted to non-Member States — Education allowance with interest — Reassignment to headquarters — Retraining — Period of normal secondment — Articles 3 and 15 of Annex X to the Staff Regulations)

(2010/C 24/143)

Language of the case: French

Parties

Applicant: Roberto Ridolfi (Brussels, Belgium) (represented by: N. Lhoëst, lawyer)

Defendant: Commission of the European Communities (represented by: D. Martin and B. Eggers, acting as Agents)

Re:

Annulment of the Appointing Authority's decision to refuse the applicant entitlement to reuse and retain the education allowance together with interest in respect of his two eldest children

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Ridolfi to pay the costs.*

[1] OJ C 55, 7.3.2009, p. 53.

Judgment of the Civil Service Tribunal (First Chamber) of 30 November 2009 — de Britto Patrício-Dias v Commission

(Case F-16/09) [1]

(Staff case — Officials — Reports — Career Development Report — 2007 Assessment procedure — Infringement of Article 43 of the Staff Regulations — Statement of reasons — Manifest error of assessment — Assessment of productivity based on part of the reference period)

(2010/C 24/144)

Language of the case: French

Parties

Applicant: Jorge de Britto Patrício-Dias (Brussels, Belgium) (represented by: L. Massaux, lawyer)

Defendant: European Commission (represented by: C. Berardis-Kayser and G. Berscheid, Agents)

Re:

Annulment of the decision to reject the applicant's complaint against the decision concerning his assessment during the year 2007.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr de Britto Patrício-Dias to pay the costs.*

[1] OJ C 90, 18.4.2009, p. 41.

Order of the Civil Service Tribunal (Third Chamber) of 18 November 2009 — Chassagne v Commission

(Case F-11/05 RENV) [1]

(Civil service — Referral back to the Tribunal after setting aside — No need to adjudicate)

(2010/C 24/145)

Language of the case: French

Parties

Applicant: Olivier Chassagne (Brussels, Belgium) (represented by: T. Bontinck, lawyer)

Defendant: Commission of the European Communities (represented initially by: G. Berscheid and V. Joris, acting as Agents, and by F. Longfils, lawyer, and subsequently by: J. Currall and G. Berscheid, acting as Agents, and by J.-L. Fagnart, lawyer)

Re:

First, annulment of the Commission's decision refusing to apply to the applicant, who is a native of a French Overseas Department, during the transitional period the provisions in force prior to 1 May 2004 on the detailed rules for the reimbursement of travel expenses applicable to officials whose place of employment and place of origin is in Europe and, secondly, an application for damages — Case T-253/06 P referred back after appeal

Operative part of the order

1. *There is no need to adjudicate in Case F-11/05 RENV Chassagne v Commission and the case shall be removed from the register.*

2. *The Commission of the European Communities is ordered to pay the costs incurred by the applicant until delivery of the judgment of the Court of First Instance of 19 September 2008. After delivery of that judgment, each party shall bear its own costs.*

(1) OJ C 115, 14.5.2005, p. 36.

Order of the Civil Service Tribunal (First Chamber) of 10 November 2009 — Marcuccio v Commission

(Case F-70/07) (1)

(Staff case — Officials — Action for damages — Availability of a parallel remedy — Manifestly inadmissible)

(2010/C 24/146)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: C. Cipressa, lawyer)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and J. Currall, acting as Agents)

Re:

Annulment of the Commission's decision to not grant the applicant's application for reimbursement of part of his costs which the Commission was ordered to pay in the order of 6 March 2006 of the Court of First Instance in Case T-176/04 — Application for damages — Case T-176/04 *DEP* was referred by the Court of First Instance by order of 6 July 2009.

Operative part of the order

1. *The first, second, third and sixth heads of claim in the action brought by Mr Marcuccio must be rejected as manifestly inadmissible.*

2. *The parties are to bear their own costs in relation to the first, second, third and sixth heads of claim in the action brought by Mr Marcuccio, including those incurred in the proceedings in Case T-176/04 DEP.*

(1) OJ C 223, 22.9.2007, p. 20.

Order of the Civil Service Tribunal (First Chamber) of 29 October 2009 — Marcuccio v Commission

(Case F-94/08) (1)

(Staff case — Officials — Execution of a judgment — Reimbursement of expenses — Intention of the administration to make a deduction from the invalidity allowance of the official — No act adversely affecting the applicant — Action for damages — Manifestly inadmissible)

(2010/C 24/147)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and C. Berardis-Kayser, acting as Agents, and A. Dal Ferro, lawyer)

Re:

Annulment of the Commission's decision to claim the costs in Case T-241/03 and an application for damages for the harm suffered by the applicant as a result.

Operative part of the order

1. *The action brought by Mr Marcuccio is rejected as manifestly inadmissible.*

2. *Mr Marcuccio is ordered to pay the costs.*

(1) OJ C 6, 10.1.2009, p. 46.

Order of the Civil Service Tribunal (First Chamber) of 25 November 2009 — Soerensen Ferraresi v Commission

(Case F-5/09) (1)

(Staff cases — Officials — Action for damages — Admissibility — Complaint — Act causing adverse effect)

(2010/C 24/148)

Language of the case: Italian

Parties

Applicant: Ayo Soerensen Ferraresi (Milan, Italy) (represented by: C. Di Vuolo, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and J. Baquero Cruz, Agents)

Re:

Officials — Application for compensation for the damage suffered by the applicant as a result of the decision of 1 February 2003 to retire the applicant on the ground of invalidity.

Operative part of the order

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

2. *Ms Soerensen Ferraresi is ordered to pay the costs.*

([1]) OJ C 113, 16.05.2009, p. 45

Order of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Meister v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

(Case F-17/09) ([1])

(Staff cases — Officials — Action for annulment — Carry-over of promotion points acquired earlier — Absence of act having adverse effect — Action for damages — Damages not quantified — Manifest inadmissibility)

(2010/C 24/149)

Language of the case: German

Parties

Applicant: Herbert Meister (Muchamiel, Spain) (represented by: H.-J. Zimmermann, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (represented by: I. de Medrano Caballero, Agent, assisted by D. Waelbroeck, lawyer)

Re:

Annulment of the dismissal of the applicant's complaint regarding the defective and incorrect periodical report for the year 2008 and application for damages for the material loss allegedly suffered.

Operative part of the order

1. *Mr Meister's action is dismissed as manifestly inadmissible;*

2. *Mr Meister is ordered to bear his own costs and to pay the costs of the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

([1]) OJ C 113, 16.05.2009, p. 46

Order of the Civil Service Tribunal (First Chamber) of 30 November 2009 — Lebedef v Commission

(Case F-54/09) ([1])

(Staff cases — Officials — Annual leave — Half-time secondment for the purposes of union representation — Unauthorised absence — Deduction from annual leave entitlement — Article 60 of the Staff Regulations — Action manifestly unfounded)

(2010/C 24/150)

Language of the case: French

Parties

Applicant: Giorgio Lebedef (Senningerberg, Luxembourg) (represented by: F. Frabetti, lawyer)

Defendant: Commission of the European Communities (represented by: J. Currall and G. Berscheid, Agents)

Re:

Annulment of several decisions concerning the deduction of 39 days of the applicant's leave entitlement for 2008.

Operative part of the order

1. *The action is dismissed as manifestly unfounded in law;.*

2. *Mr Lebedef is ordered to pay the costs in their entirety.*

([1]) OJ C 167, 18.07.2009, p. 28

Order of the Civil Service Tribunal (First Chamber) of 29 September 2009 — Labate v Commission

(Case F-64/09)

(Staff cases — Officials — Social security — Insurance against the risk of accident and occupational disease — Occupational disease — Action for failure to act — Lack of jurisdiction of the Tribunal — Referral to the Court of First Instance)

(2010/C 24/151)

Language of the case: English

Parties

Applicant: Kay Labate (Tarquinia, Italy) (represented by: I. Forrester, lawyer)

Defendant: Commission of the European Communities

Re:

Application for a declaration that the Commission unlawfully failed to act insofar as it failed to take a decision on the applicant's request for recognition that the illness from which her husband died was an occupational disease.

Operative part of the order

1. *The action registered as Case F 64/09 Labate v Commission is referred to the Court of First Instance.*

2. *The costs are reserved.*

Action brought on 15 October 2009 — Kalmár v Europol

(Case F-83/09)

(2010/C 24/152)

Language of the case: Dutch

Parties

Applicant: Andreas Kalmár (The Hague, The Netherlands) (represented by: D. Coppens, lawyer)

Defendant: Europol

Subject-matter and description of the proceedings

Annulment of the decisions of Europol of 4 and 24 February 2009 concerning, respectively, the applicant's dismissal of 4 May 2009 and his suspension. In addition, the application made by the applicant for reintegration and damages for the material and non-material harm suffered.

Form of order sought

— Annul the initial decisions of Europol of 4 and 24 February 2009 and the decision on the complaint of 18 July 2009 and order Europol to allow Mr Kalmár to resume his work there;

— order Europol to pay compensation calculated from the date on which his contract was unduly terminated to the date on which his contract should actually have expired;

— order Europol to pay EUR 25 000 in compensation for non-material harm suffered;

— order Europol to pay the costs.

Action brought on 21 October 2009 — Dekker v Europol

(Case F-87/09)

(2010/C 24/153)

Language of the case: Dutch

Parties

Applicant: Abraham Dekker (Dordrecht, Netherlands) (represented by: D. Dane and P. de Casparis, lawyers)

Defendant: Europol

Subject-matter and description of the proceedings

Annulment of the decision of Europol of 15 April 2009 refusing to guarantee the amount of the invalidity pension awarded to the applicant (taking into account his other sources of income) at a net income of 90 % of his last gross basic salary and refusing to respond to the negative changes to the applicant's total net income due to a tax adjustment.

Form of order sought

— annul the decision of 15 April 2009 by which the defendant informed the applicant that it is not required to guarantee a net income of 90 % of the last gross basic salary of the member of staff and that it does not have an obligation to make good the financial loss in so far as the taxation by the Netherlands tax authorities is maintained;

— annul the decision of 23 July 2009 on the complaint which declared the pleas raised by the applicant against the decision of 15 April 2009 unfounded;

— order Europol to pay the costs.

Action brought on 23 October 2009 — Z v Court of Justice

(Case F-88/09)

(2010/C 24/154)

Language of the case: French

Parties

Applicant: Z (Luxembourg, Luxembourg) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: Court of Justice of the European Union

Subject-matter and description of the proceedings

First, annulment of the decision to transfer the applicant in the interest of the service to another directorate and, second, compensation for non-material loss.

Form of order sought

— annul the decision of the appointing authority of 18 December 2008 to transfer the applicant to the library directorate with effect on 1 January 2009;

— inasmuch as it is necessary, annul the decision of 9 July 2009, received on 13 July 2009 to reject the complaint;

— order the defendant to pay the sum of EUR 50 000 as compensation for the non-material loss;

— order the Court of Justice of the European Union to pay the costs.

Action brought on 13 November 2009 — Skareby v Commission

(Case F-95/09)

(2010/C 24/155)

Language of the case: English

Parties

Applicant: Carina Skareby (Leuven, Belgium) (represented by: S. Rodrigues, C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

The subject matter and description of the proceedings

An appeal lodged against the decision of the Commission rejecting the applicant's request that an administrative inquiry be opened in order to establish the psychological harassment she alleges to have been a victim of.

Form of order sought

The applicant claims that the Court should:

— declare her appeal admissible;

— annul the decision of the Commission of 4 March 2009 and, so far as necessary, the decision rejecting the complaint;

— order the Commission to pay the costs.

Action brought on 16 November 2009 — Taillard v Parliament

(Case F-97/09)

(2010/C 24/156)

Language of the case: French

Parties

Applicant: Christine Taillard (Thionville, France) (represented by: N. Camboine and C. Lelievre, lawyers)

Defendant: European Parliament

Subject-matter and description of the proceedings

First, annulment of the decision of the European Parliament declaring inadmissible a medical certificate certifying the applicant's incapacity to work and the resulting decision to deduct a day's leave. Second, compensation for the loss suffered by the applicant.

Form of order sought

— declare the present action admissible;

— annul the decision of the European Parliament of 15 January 2009 declaring inadmissible a medical certificate certifying an incapacity to work and the resulting decision to deduct a day's leave and, in so far as it is necessary, the confirmatory decision of 14 August 2009;

— declare the European Parliament responsible for the loss suffered by the applicant, accordingly award the applicant damages in the sum of EUR 12 000 or any other sum including a higher one to be determined by the Tribunal;

— order the European Parliament to pay the costs.

Action brought on 20 November 2009 — Whitehead v European Central Bank

(Case F-98/09)

(2010/C 24/157)

Language of the case: English

Parties

Applicant: Sarah Whitehead (Frankfurt am Main, Germany) (represented by: L. Levi, M. Vandenbussche, lawyers)

Defendant: European Central Bank

The subject matter and description of the proceedings

An appeal against the decision dated 8 January 2009 awarding the applicant a salary increase of 2 points for the purpose of the Annual Salary and Bonus Review (ASBR) for the year 2008, received on 15 January 2009, as well as against the salary statement of 15 January 2009 implementing this decision.

Form of order sought

The applicant claim that the Court should:

— annul the decision of the European Central Bank dated 8 January 2009 on the Appellant's ASBR 2008, served upon her on 13 or 14 January 2009 (during her absence);

— annul the Appellant's salary statement of 15 January 2009, implementing this decision;

— as a consequence, order the payment of the amount of her salary representing the difference between the challenged 2008 ASBR and the ASBR which should have been granted to her, as of 15 January 2009 until complete payment, plus late interest at the rate equal to the margin lending rate of the European Central Bank during the default period plus three percentage points;

— in the case that the organisation of a new 2008 ASBR procedure would be found to entail excessive difficulties, order the award of the equivalent of 3 salary points to compensate the material prejudice;

— in any case, order the compensation of the moral prejudice suffered evaluated ex aequo et bono at EUR 10 000;

— order that the European Central Bank pays all the costs.

Order of the Civil Service Tribunal of 17 September 2009 — Callewaert v Commission

(Case F-28/05) [1]

(2010/C 24/158)

Language of the case: French

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

[1] OJ C 193, 06.08.2005, p. 29 (case initially lodged before the Court of First Instance of the European Communities under number T-192/05 and transferred to the European Union Civil Service Court by order of 15.12.2005).

Order of the Civil Service Tribunal of 30 November 2009 — Moschonaki v European Foundation for the Improvement of Living and Working Conditions

(Case F-10/09) [1]

(2010/C 24/159)

Language of the case: French

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

[1] OJ C 82, 4.4.2009, p. 37.

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