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COURT OF JUSTICE OF THE EUROPEAN UNION

Last publications of the Court of Justice of the European Union in the Official Journal of the European Union

(2019/C 372/01)

Last publication

OJ C 363, 28.10.2019

Past publications

OJ C 357, 21.10.2019

OJ C 348, 14.10.2019

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OJ C 319, 23.9.2019

OJ C 312, 16.9.2019

These texts are available on:

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

GENERAL COURT

Criteria for the assignment of cases to Chambers

(2019/C 372/02)

At its plenum on 4 October 2019, the General Court decided to amend the decision relating to the criteria for the assignment of cases to Chambers adopted on 3 July 2019 and published in the *Official Journal of the European Union* of 22 July 2019 (OJ 2019 C 246, p. 2) by replacing paragraphs 2 and 3 with the following:

'2. Civil service cases, that is cases brought pursuant to Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, shall be allocated to the four Chambers specifically designated for that purpose in the decision on the assignment of Judges to Chambers in turn, in accordance with the date on which those cases are registered at the Registry.

3. Cases concerning intellectual property rights referred to in Title IV of the Rules of Procedure shall be allocated to the six Chambers specifically designated for that purpose in the decision on the assignment of Judges to Chambers in turn, in accordance with the date on which those cases are registered at the Registry.'

It follows from those amendments that the criteria for the assignment of cases to Chambers adopted by the General Court pursuant to Article 25 of the Rules of Procedure, as they appear in the decisions adopted on 3 July 2019 and 4 October 2019, are the following:

1. Cases shall be assigned to Chambers of three Judges as soon as possible after the application has been lodged and without prejudice to any subsequent application of Article 28 of the Rules of Procedure.

2. Civil service cases, that is cases brought pursuant to Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, shall be allocated to the four Chambers specifically designated for that purpose in the decision on the assignment of Judges to Chambers in turn, in accordance with the date on which those cases are registered at the Registry.

3. Cases concerning intellectual property rights referred to in Title IV of the Rules of Procedure shall be allocated to the six Chambers specifically designated for that purpose in the decision on the assignment of Judges to Chambers in turn, in accordance with the date on which those cases are registered at the Registry.

4. Cases other than those referred to in paragraphs 2 and 3 shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following two separate rotas:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures,

   — for all other cases.

5. The President of the General Court may derogate from the rotas outlined in paragraphs 2, 3 and 4 in order to take account of a connection between cases or with a view to ensuring an even spread of the workload.

6. In the light of the decision of the General Court, taken at its plenum on 19 June 2019, on the conduct of the activity of the General Court from 1 to 26 September 2019 (OJ 2019 C 238, p. 2), providing that the decision of the General Court of 11 May 2016 on the criteria for the assignment of cases to Chambers (OJ 2016 C 296, p. 2) will continue to apply between 1 and 26 September 2019, the criteria for the assignment of cases to Chambers set out above shall be laid down for the period from 27 September 2019 to 31 August 2022.

Formation of Chambers and assignment of Judges to Chambers

(2019/C 372/03)

At the extraordinary plenum of 30 September 2019, the General Court, composed of 52 Judges, decided to form ten Chambers composed of five Judges, sitting with five Judges and with three Judges attached to six formations for the period from 30 September 2019 to 31 August 2022. Each formation of the ten Chambers of the General Court shall be presided over by a President of the Chamber, who shall be elected at the same time President of the Chamber sitting with five Judges and with three Judges.

At the plenum of 4 October 2019, the General Court decided, on a proposal from the President submitted in accordance with Article 13(2) of the Rules of Procedure, to assign the Judges to Chambers for the period from 4 October 2019 to 31 August 2022 as follows:

First Chamber (Extended Composition), sitting with five Judges:

Mr Kanninen, President of the Chamber, Mr Jaeger, Ms Półtorak, Ms Porchia and Ms Stancu, Judges.

First Chamber, sitting with three Judges:

Mr Kanninen, President of the Chamber;

Formation A: Mr Jaeger and Ms Półtorak, Judges;

Formation B: Mr Jaeger and Ms Porchia, Judges;

Formation C: Mr Jaeger and Ms Stancu, Judges;

Formation D: Ms Półtorak and Ms Porchia, Judges;

Formation E: Ms Półtorak and Ms Stancu, Judges;

Formation F: Ms Porchia and Ms Stancu, Judges.

Second Chamber (Extended Composition), sitting with five Judges:

Ms Tomljenović, President of the Chamber, Ms Labucka, Mr Schalin, Ms Škvařilová-Pelzl and Mr Nõmm, Judges.

Second Chamber, sitting with three Judges:

Ms Tomljenović, President of the Chamber;

Formation A: Ms Labucka and Mr Schalin, Judges;

Formation B: Ms Labucka and Ms Škvařilová-Pelzl, Judges;

Formation C: Ms Labucka and Mr Nõmm, Judges;

Formation D: Mr Schalin and Ms Škvařilová-Pelzl, Judges;

Formation E: Mr Schalin and Mr Nõmm, Judges;

Formation F: Ms Škvařilová-Pelzl and Mr Nõmm, Judges.

Third Chamber (Extended Composition), sitting with five Judges:

Mr Collins, President of the Chamber, Mr Kreuschitz, Mr Csehi, Mr De Baere and Ms Steinfatt, Judges.

Third Chamber, sitting with three Judges:

Mr Collins, President of the Chamber;

Formation A: Mr Kreuschitz and Mr Csehi, Judges;

Formation B: Mr Kreuschitz and Mr De Baere, Judges;

Formation C: Mr Kreuschitz and Ms Steinfatt, Judges;

Formation D: Mr Csehi and Mr De Baere, Judges;

Formation E: Mr Csehi and Ms Steinfatt, Judges;

Formation F: Mr De Baere and Ms Steinfatt, Judges.

Fourth Chamber (Extended Composition), sitting with five Judges:

Mr Gervasoni, President of the Chamber, Mr Madise, Mr Nihoul, Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fourth Chamber, sitting with three Judges:

Mr Gervasoni, President of the Chamber;

Formation A: Mr Madise and Mr Nihoul, Judges;

Formation B: Mr Madise and Ms Frendo, Judges;

Formation C: Mr Madise and Mr Martín y Pérez de Nanclares, Judges;

Formation D: Mr Nihoul and Ms Frendo, Judges;

Formation E: Mr Nihoul and Mr Martín y Pérez de Nanclares, Judges;

Formation F: Ms Frendo and Mr Martín y Pérez de Nanclares, Judges.

Fifth Chamber (Extended Composition), sitting with five Judges:

Mr Spielmann, President of the Chamber, Mr Forrester, Mr Öberg, Ms Spineanu-Matei and Mr Mastroianni, Judges.

Fifth Chamber, sitting with three Judges:

Mr Spielmann, President of the Chamber;

Formation A: Mr Forrester and Mr Öberg, Judges;

Formation B: Mr Forrester and Ms Spineanu-Matei, Judges;

Formation C: Mr Forrester and Mr Mastroianni, Judges;

Formation D: Mr Öberg and Ms Spineanu-Matei, Judges;

Formation E: Mr Öberg and Mr Mastroianni, Judges;

Formation F: Ms Spineanu-Matei and Mr Mastroianni, Judges.

Sixth Chamber (Extended Composition), sitting with five Judges:

Ms Marcoulli, President of the Chamber, Mr Frimodt Nielsen, Mr Schwarcz, Mr Iliopoulos and Mr Norkus, Judges.

Sixth Chamber, sitting with three Judges:

Ms Marcoulli, President of the Chamber;

Formation A: Mr Frimodt Nielsen and Mr Schwarcz, Judges;

Formation B: Mr Frimodt Nielsen and Mr Iliopoulos, Judges;

Formation C: Mr Frimodt Nielsen and Mr Norkus, Judges;

Formation D: Mr Schwarcz and Mr Iliopoulos, Judges;

Formation E: Mr Schwarcz and Mr Norkus, Judges;

Formation F: Mr Iliopoulos and Mr Norkus, Judges.

Seventh Chamber (Extended Composition), sitting with five Judges:

Mr da Silva Passos, President of the Chamber, Mr Valančius, Ms Reine, Mr Truchot and Mr Sampol Pucurull, Judges.

Seventh Chamber, sitting with three Judges:

Mr da Silva Passos, President of the Chamber;

Formation A: Mr Valančius and Ms Reine, Judges;

Formation B: Mr Valančius and Mr Truchot, Judges;

Formation C: Mr Valančius and Mr Sampol Pucurull, Judges;

Formation D: Ms Reine and Mr Truchot, Judges;

Formation E: Ms Reine and Mr Sampol Pucurull, Judges;

Formation F: Mr Truchot and Mr Sampol Pucurull, Judges.

Eighth Chamber (Extended Composition), sitting with five Judges:

Mr Svenningsen, President of the Chamber, Mr Barents, Mr Mac Eochaidh, Ms Pynnä and Mr Laitenberger, Judges.

Eighth Chamber, sitting with three Judges:

Mr Svenningsen, President of the Chamber;

Formation A: Mr Barents and Mr Mac Eochaidh, Judges;

Formation B: Mr Barents and Ms Pynnä, Judges;

Formation C: Mr Barents and Mr Laitenberger, Judges;

Formation D: Mr Mac Eochaidh and Ms Pynnä, Judges;

Formation E: Mr Mac Eochaidh and Mr Laitenberger, Judges;

Formation F: Ms Pynnä and Mr Laitenberger, Judges.

Ninth Chamber (Extended Composition), sitting with five Judges:

Ms Costeira, President of the Chamber, Mr Gratsias, Ms Kancheva, Mr Berke and Ms Perišin, Judges.

Ninth Chamber, sitting with three Judges:

Ms Costeira, President of the Chamber;

Formation A: Mr Gratsias and Ms Kancheva, Judges;

Formation B: Mr Gratsias and Mr Berke, Judges;

Formation C: Mr Gratsias and Ms Perišin, Judges;

Formation D: Ms Kancheva and Mr Berke, Judges;

Formation E: Ms Kancheva and Ms Perišin, Judges;

Formation F: Mr Berke and Ms Perišin, Judges.

Tenth Chamber (Extended Composition), sitting with five Judges:

Mr Kornezov, President of the Chamber, Mr Buttigieg, Mr Passer, Ms Kowalik-Bańczyk and Mr Hesse, Judges.

Tenth Chamber, sitting with three Judges:

Mr Kornezov, President of the Chamber;

Formation A: Mr Buttigieg and Mr Passer, Judges;

Formation B: Mr Buttigieg and Ms Kowalik-Bańczyk, Judges;

Formation C: Mr Buttigieg and Mr Hesse, Judges;

Formation D: Mr Passer and Ms Kowalik-Bańczyk, Judges;

Formation E: Mr Passer and Mr Hesse, Judges;

Formation F: Ms Kowalik-Bańczyk and Mr Hesse, Judges.

The First, Fourth, Seventh and Eighth Chambers shall be responsible for cases brought pursuant to Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, and the Second, Third, Fifth, Sixth, Ninth and Tenth Chambers shall be responsible for cases concerning intellectual property rights referred to in Title IV of the Rules of Procedure.

The General Court also decided the following:

— the President and the Vice-President shall not be attached permanently to a Chamber;

— in the course of each judicial year, the Vice-President shall sit in each of the ten Chambers sitting with five Judges, on the basis of one case per Chamber in the following order:

  — the first case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the First Chamber, the Second Chamber, the Third Chamber, the Fourth Chamber and the Fifth Chamber;

  — the third case referred back, by decision of the General Court, to an extended Chamber sitting with five Judges of the Sixth Chamber, the Seventh Chamber, the Eighth Chamber, the Ninth Chamber and the Tenth Chamber.

Where the Vice-President, acting in that capacity, sits in a Chamber sitting with five Judges, that Chamber shall be composed of the Vice-President, the Judges of the Chamber sitting with three Judges originally seised as well as one of the other Judges of the Chamber in question, determined on the basis of the reverse order to the order laid down in Article 8 of the Rules of Procedure.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Appeal brought on 12 February 2019 by Vitromed GmbH against the order of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-821/17, Vitromed GmbH v European Union Intellectual Property Office (EUIPO)

(C-124/19 P)

(2019/C 372/04)

Language of the case: German

Parties

Appellant: Vitromed GmbH (represented by: M. Linß, Rechtsanwalt)

Other party to the proceedings: European Union Intellectual Property Office (EUIPO), Vitromed Healthcare

By order of 11 September 2019, the Court of Justice of the European Union (Sixth Chamber) dismissed the appeal and ordered the appellant to bear its own costs.

Appeal brought on 17 April 2019 by Renew Consorzio Energie Rinnovabili against the order of the General Court (Second Chamber) delivered on 20 February 2019 in Case T-39/19 Renew Consorzio Energie Rinnovabili v Commission and Italy

(Case C-325/19 P)

(2019/C 372/05)

Language of the case: Italian

Parties

Appellant: Renew Consorzio Energie Rinnovabili (represented by: G. Passalacqua, avvocato)

Other parties to the proceedings: European Commission, Italian Republic

By order of 19 September 2019, the Court (Sixth Session) dismissed the appeal as manifestly inadmissible and ordered Renew Consorzio Energie Rinnovabili to bear its costs.

Appeal brought on 6 May 2019 by PITEE Fogyasztóvédelmi Egyesület against the judgment of the General Court (Second Chamber) delivered on 22 March 2019 in Case T-566/18, PITEE Fogyasztóvédelmi Egyesület v European Commission

(Case C-358/19 P)

(2019/C 372/06)

Language of the case: German

Parties

Appellant: PITEE Fogyasztóvédelmi Egyesület (represented by: D. Lázár, Rechtsanwalt)

Other party: European Commission

By order of 26 September 2019, the Court of Justice of the European Union (Sixth Chamber) dismissed the appeal as manifestly unfounded and ordered the appellant to pay its own costs.

Appeal brought on 29 May 2019 by Primed Halberstadt Medizintechnik GmbH against the judgment of the General Court (Seventh Chamber) delivered on 20 March 2019 in Case T-138/17: Prim v EUIPO - Primed Halberstadt Medizintechnik

(Case C-421/19 P)

(2019/C 372/07)

Language of the case: English

Parties

Appellant: Primed Halberstadt Medizintechnik GmbH (represented by: R. Ingerl, Rechtsanwalt)

Other parties to the proceedings: Prim, SA (represented by: L. Broschat García, abogada), European Union Intellectual Property Office

By order of 16 September 2019 the Court of Justice (Chamber determining whether appeals may proceed) held that the appeal is not allowed to proceed and that Primed Halberstadt Medizintechnik GmbH shall bear its own costs.

Appeal brought on 4 June 2019 by Mr Kurt Hesse against the judgment of the General Court (Fifth Chamber) delivered on 4 April 2019 in Joined Cases T-910/16 and T-911/16, Kurt Hesse and Wedl & Hofmann GmbH v European Union Intellectual Property Office (EUIPO)

(Case C-426/19 P)

(2019/C 372/08)

Language of the case: German

Parties

Appellant: Kurt Hesse (represented by: M. Krogmann, Rechtsanwalt)

Other party to the proceedings: Wedl & Hofmann GmbH, European Union Intellectual Property Office

By order of 24 September 2019, the Court of Justice of the European Union (Chamber determining whether appeals may proceed) decided that the appeal should not be allowed to proceed and ordered the appellant to bear his own costs.

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 28 June 2019 — UCMR — ADA Asociația pentru Drepturi de Autor a Compozitorilor v Asociației Culturale Suflet de Român, represented by its liquidator, Pro Management Insolv IPURL

(Case C-501/19)

(2019/C 372/09)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Appellant: UCMR — ADA Asociația pentru Drepturi de Autor a Compozitorilor

Respondent: Asociației Culturale Suflet de Rom, represented by its liquidator, Pro Management Insolv IPURL

Questions referred

1. Do the holders of rights in musical works supply services within the meaning of Articles 24(1) and 25(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [1] (the VAT Directive) to performance

organisers from which collective management organisations, on the basis of an authorisation — a non-exclusive licence — receive remuneration, in their own name but on behalf of those right holders, for the public performance of musical works?

2. If the first question is answered in the affirmative, do collective management organisations, when receiving remuneration from performance organisers for the right to perform musical works for a public audience, act as a taxable person within the meaning of Article 28 of the VAT Directive, and are they required to issue invoices including VAT to the respective performance organisers, and, when remuneration is paid to authors and other holders of copyright in musical works, are the latter, in turn, required to issue invoices including VAT to the collective management organisation?

(1) OJ 2006 L 347, p. 1.

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 11 July 2019 — PO v Subdelegación del Gobierno en Ciudad Real

(Case C-531/19)

(2019/C 372/10)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: PO

Defendant: Subdelegación del Gobierno en Ciudad Real

Question referred

Is an interpretation such as that set out in judgments of the Spanish Supreme Court No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ECLI:ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ECLI:ES:TS:2019:663), according to which, through an interpretation of Directive 2001/40/EC, (1) it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a sentence of at least one year in duration can and should be 'automatically' removed, that is to say, [without] needing to give any consideration to his personal, family, social or employment circumstances, compatible with Article 12 of Council [Directive] 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, (2) and with — inter alia — the judgments of the Court of Justice of the European Union of 7 December 2017 (Case C-636/16 (3)) and of 8 December 2011 (Case C-371/08 (4))?

(1) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ 2001 L 149, p. 34).
(2) OJ 2004 L 16, p. 44.
(3) Judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949).
(4) Judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 11 July 2019 — RQ v Subdelegación del Gobierno en Ciudad Real

(Case C-533/19)

(2019/C 372/11)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: RQ

Defendant: Subdelegación del Gobierno en Ciudad Real

Question referred

Is an interpretation such as that set out in judgments of the Spanish Supreme Court No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ECLI:ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ECLI:ES:TS:2019:663), according to which, through an interpretation of Directive 2001/40/EC, ([1]) it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a sentence of at least one year in duration can and should be 'automatically' removed, that is to say, [without] needing to give any consideration to his personal, family, social or employment circumstances, compatible with Article 12 of Council [Directive] 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, ([2]) and with — inter alia — the judgments of the Court of Justice of the European Union of 7 December 2017 (Case C-636/16 ([3])) and of 8 December 2011 (Case C-371/08 ([4]))?

([1]) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ 2001 L 149, p. 34).
([2]) OJ 2004 L 16, p. 44.
([3]) Judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949).
([4]) Judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 11 July 2019 — SR v Subdelegación del Gobierno en Ciudad Real

(Case C-534/19)

(2019/C 372/12)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: SR

Defendant: Subdelegación del Gobierno en Ciudad Real

Question referred

Is an interpretation such as that set out in judgments of the Spanish Supreme Court No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ECLI:ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ECLI:ES:TS:2019:663), according to which, through an interpretation of Directive 2001/40/EC, ([1]) it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a sentence of at least one year in duration can and should be 'automatically' removed, that is to say, [without] needing to give any consideration to his personal, family, social or employment circumstances, compatible with Article 12 of Council [Directive] 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, ([2]) and with — inter alia — the judgments of the Court of Justice of the European Union of 7 December 2017 (Case C-636/16 ([3])) and of 8 December 2011 (Case C-371/08 ([4]))?

([1]) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ 2001 L 149, p. 34).
([2]) OJ 2004 L 16, p. 44.
([3]) Judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949).
([4]) Judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809).

Request for a preliminary ruling from the Înalta Curte de Casație și Justiție (Romania) lodged on 15 July 2019 — CY and Asociația 'Forumul Judecătorilor din România' v Inspecția Judiciară, Consiliul Superior al Magistraturii and Înalta Curte de Casație și Justiție

(Case C-547/19)

(2019/C 372/13)

Language of the case: Romanian

Referring court

Înalta Curte de Casație și Justiție

Parties to the main proceedings

Applicants: CY and Asociația 'Forumul Judecătorilor din România'

Defendants: Inspecția Judiciară, Consiliul Superior al Magistraturii and Înalta Curte de Casație și Justiție

Question referred

Must Article 2 of the Treaty on European Union, Article 19(1) thereof and Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as precluding the intervention of a constitutional court (a body which is not, under national law, a judicial institution) as regards the way in which a supreme court has interpreted and applied infra-constitutional legislation in the activity of establishing panels hearing cases?

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 17 July 2019 — DX v Subdelegación del Gobierno en Toledo

(Case C-549/19)

(2019/C 372/14)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: DX

Defendant: Subdelegación del Gobierno en Toledo

Question referred

Is an interpretation such as that set out in judgments of the Spanish Supreme Court No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ECLI:ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ECLI:ES:TS:2019:663), according to which, through an interpretation of Directive 2001/40/EC, ([1]) it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a sentence of at least one year in duration can and should be 'automatically' removed, that is to say, without needing to give any consideration to his personal, family, social or employment circumstances, compatible with Article 12 of Council [Directive] 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, ([2]) and with — inter alia — the judgments of the Court of Justice of the European Union of 7 December 2017 (Case C-636/16 ([3])) and of 8 December 2011 (Case C-371/08 ([4]))?

([1]) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ 2001 L 149, p. 34).
([2]) OJ 2004 L 16, p. 44.
([3]) Judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949).
([4]) Judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809).

Request for a preliminary ruling from Tribunalul Cluj (Romania) lodged on 23 July 2019 — Impresa Pizzarotti & C SPA Italia Sucursala Cluj v Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

(Case C-558/19)

(2019/C 372/15)

Language of the case: Romanian

Referring court

Tribunalul Cluj

Parties to the main proceedings

Applicant: Impresa Pizzarotti & C SPA Italia Sucursala Cluj

Defendant: Agenția Națională de Administrare Fiscală — Direcția Generală de Administrare a Marilor Contribuabili

Question referred

Do Articles 49 and 63 of the Treaty on the Functioning of the European Union preclude national legislation such as that at issue in the present case (Articles 11(2) and 29(3) of Legea nr. 571/2003 privind Codul fiscal (Law No 571/2003 establishing the Romanian Tax Code)), which provides that a bank transfer of money from a company branch resident in one Member State to the parent company resident in another Member State may be reclassified as a revenue-generating transaction, with the consequent obligation to apply the rules on transfer pricing, whereas, if the same transaction had been effected between a company branch and a parent company, both of which were resident in the same Member State, that transaction could not have been reclassified in the same way and the rules on transfer pricing would not have been applied?

Request for a preliminary ruling from the Juzgado de lo Mercantil n.o 3 de Valencia (Spain) lodged on 23 July 2019 — GT v Air Nostrum Líneas Aéreas del Mediterráneo, S.A.

(Case C-560/19)

(2019/C 372/16)

Language of the case: Spanish

Referring court

Juzgado de lo Mercantil n.º 3 de Valencia

Parties to the main proceedings

Applicant: GT

Defendant: Air Nostrum Líneas Aéreas del Mediterráneo, S.A.

Questions referred

1. Can a company which provides air passenger transport and which sells the ticket but which does not actually operate the flight be considered to come within the concept of '*operating air carrier*'?

2. If the answer to the previous question is in the negative, does the right to compensation for passengers under Article 7 of Regulation [(EC) No] 261/2004 ([1]) exist where the flight is composed of more than one leg and, as a result of a short delay (less than three hours) on one leg, there is a long delay (more than three hours) on arrival at the final destination because of a missed connection? If the answer is in the affirmative, where the different legs are operated by different carriers, is the obligation to pay compensation under Article 7 of Regulation [(EC) No] 261/2004 incumbent on the operating carrier on whose leg there was a short delay (less than three hours) which, however, caused the missed connection and, therefore, a long delay (more than three hours) on arrival at the final destination?

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

Appeal brought on 23 July 2019 by Armando Carvalho and Others against the order of the General Court (Second Chamber) delivered on 8 May 2019 in Case T-330/18: Carvalho and Others v Parliament and Council

(Case C-565/19 P)

(2019/C 372/17)

Language of the case: English

Parties

Appellants: Armando Carvalho and Others (represented by: G. Winter, Professor, R. Verheyen, Rechtsanwältin, H. Leith, Barrister)

Other parties to the proceedings: European Parliament, Council of the European Union

Form of order sought

The appellants claim that the Court should:

— set aside the order under appeal;

— declare that the applications are admissible;

— refer the case back to the General Court to determine the merits of the application for annulment;

— refer the case back to the General Court to determine the merits of the application invoking the non-contractual liability of the Union; and

— order the respondents to pay the costs of the appeal and the costs of the proceedings before the General Court.

Pleas in law and main arguments

The appellants appeal against the General Court's decision to dismiss their applications as inadmissible on the following grounds.

First ground: The General Court erred in finding that the appellants do not satisfy the principles stated in the Plaumann case law for establishing individual concern. The three acts on greenhouse emission gases ([1]) ([2]) ([3]) allow emissions that affect each appellant in a distinctive factual way. In addition, the Plaumann test is met because the three greenhouse emission gases acts infringe personal fundamental rights of the appellants.

Second ground: In the alternative, the General Court erred in not adapting the Plaumann test in light of the compelling challenge of climate change and the foundation of the appellants' case in their individual fundamental rights, including a guarantee of effective legal protection of those rights. The CJEU has held that for a right to be effective it must be accompanied by a remedy and the General Court erred in finding that national courts (and the preliminary reference procedure under Article 267 TFEU) or an action challenging implementing acts by the Commission would provide an adequate system of remedies in this case.

This Court should accordingly hold that where (as here) no other effective legal remedy is available to protect an applicant's fundamental rights, the requirement of 'individual concern' is established where it is alleged and substantiated that a legislative act encroaches on a personal fundamental right of the applicant to a serious degree, or alternatively, interferes with the essence of the right. This requirement was met here.

Third ground: Further to grounds 1 and 2, the General Court erred in denying that the Saminuorra association (association of young Sami) had standing, by disregarding (without explanation) the evidence showing that the majority of members of the association

are individually concerned and would have standing in their own right. In the alternative, the Court should have relaxed the criteria for establishing the locus standi in the case of associations representing an indigenous community.

Fourth ground: In dismissing the application for non-contractual liability as inadmissible, the General Court applied the wrong legal test, by introducing a new requirement for applicants to establish that they would have standing for the purposes of Article 263 TFEU. This requirement has no support in the text of the Treaty or the case law.

([1]) Directive (EU) 2018/410 of the European Parliament and of the Council of 14 March 2018 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, and Decision (EU) 2015/1814 (OJ 2018, L 76, p. 3).
([2]) Regulation (EU) 2018/841 of the European Parliament and of the Council of 30 May 2018 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018, L 156, p. 1).
([3]) Regulation (EU) 2018/842 of the European Parliament and of the Council of 30 May 2018 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement and amending Regulation (EU) No 525/2013 (OJ 2018, L 156, p. 26).

Request for a preliminary ruling from the Tribunal Superior de Justicia de Castilla-La Mancha (Spain) lodged on 25 July 2019 — LP v Subdelegación del Gobierno en Toledo

(Case C-567/19)

(2019/C 372/18)

Language of the case: Spanish

Referring court

Tribunal Superior de Justicia de Castilla-La Mancha

Parties to the main proceedings

Applicant: LP

Defendant: Subdelegación del Gobierno en Toledo

Question referred

Is an interpretation such as that set out in judgments of the Spanish Supreme Court No 191/2019 of 19 February 2019, appeal in cassation 5607/2017 (ECLI:ES:TS:2019:580), and No 257/2019 of 27 February 2019, appeal in cassation 5809/2017 (ECLI:ES:TS:2019:663), according to which, through an interpretation of Directive 2001/40/EC, ([1]) it is possible to come to the conclusion that any third-country national holding a long-term residence permit who has committed an offence punishable by a sentence of at least one year in duration can and should be 'automatically' removed, that is to say, [without] needing to give any consideration to his personal, family, social or employment circumstances, compatible with Article 12 of Council [Directive] 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, ([2]) and with — inter alia — the judgments of the Court of Justice of the European Union of 7 December 2017 (Case C-636/16 ([3])) and of 8 December 2011 (Case C-371/08 ([4]))?

([1]) Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (OJ 2001 L 149, p. 34).
([2]) OJ 2004 L 16, p. 44.
([3]) Judgment of 7 December 2017, *López Pastuzano* (C-636/16, EU:C:2017:949).
([4]) Judgment of 8 December 2011, *Ziebell* (C-371/08, EU:C:2011:809).

Request for a preliminary ruling from the Verwaltungsgericht Darmstadt (Germany) lodged on 30 July 2019 — RJ v Stadt Offenbach am Main

(Case C-580/19)

(2019/C 372/19)

Language of the case: German

Referring court

Verwaltungsgericht Darmstadt

Parties to the main proceedings

Applicant: RJ

Defendant: Stadt Offenbach am Main

Questions referred

1. Is Article 2 of Directive 2003/88/EC ([1]) to be interpreted as meaning that periods of stand-by time during which an employee is subject to the obligation to reach the city boundary of his place of employment in uniform with the operational vehicle within twenty minutes are to be regarded as working time, even though the employer has not prescribed a place for the employee to stay, but the employee is nevertheless significantly restricted in his choice of location and in the opportunities to devote himself to his personal and social interests?

2. If the first question referred is answered in the affirmative:

   In a situation such as that of the first question referred, is Article 2 of Directive 2003/88/EC to be interpreted as meaning that, when defining the concept of working time, account is also to be taken of whether and to what extent a service call-out is usually to be expected during stand-by duty which is to be spent at a place not prescribed by the employer?

([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).

Appeal brought on 22 August 2019 by Csanád Szegedi against the judgment of the General Court (Sixth Chamber) delivered on 27 June 2019 in Case T-135/18 Csanád Szegedi v European Parliament

(Case C-628/19 P)

(2019/C 372/20)

Language of the case: Hungarian

Parties

Appellant: Csanád Szegedi (represented by: K. Bodó, ügyvéd)

Other party to the proceedings: European Parliament

Form of order sought

In the appeal, Mr Csanád Szegedi claims that the Court of Justice should:

1. as regards the first ground of appeal, inasmuch as it relates to the amount claimed in respect of the recruitment of Mr László Tibor Erdélyi and Dr József Virág as accredited parliamentary assistants, amend the judgment of the General Court, uphold the application and annul the decision of the Secretary-General of the European Parliament of 30 November 2017 and debit note No 2017-1635 issued by the Directorate-General for Finance of the Secretariat of the European Parliament;

2. as regards the second ground of appeal, inasmuch as it relates to the amount claimed in respect of the recruitment of Mr László Tibor Erdélyi and Dr József Virág as accredited parliamentary assistants, set aside the judgment of the General Court and refer the case back to it.

Pleas in law and main arguments

In support of his appeal, the appellant relies on two grounds:

First ground of appeal:

Infringement, in the recovery procedure before the Secretary-General of the European Parliament, of the right to a fair trial (Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms ('ECHR') and Article 47, second paragraph, of the Charter of Fundamental Rights of the European Union ('the Charter')), and the principles associated therewith (principle of *inter partes* proceedings, principle of equality of arms, and principle of the rights of the defence), in so far as the appellant did not have access to the Report of the European Anti-Fraud Office (OLAF) on which the decision was based, or to the evidence supporting that report. The appellant was also unable to exercise his right to be heard prior to the adoption of that decision, in breach of the provisions of Article 68(2) of the Decision of the Bureau of the Parliament concerning implementing measures for the Statute for Members of the European Parliament ('the implementing measures'). The General Court erred, in paragraph 44 of its judgment, in relying on Article 11(4) of Regulation No 883/2013, since that article does not govern the recovery procedure before the Secretary-General, but rather the procedure before OLAF. In that context, in paragraph 45 of the judgment under appeal, the General Court incorrectly applied the case-law established in paragraph 35 of the judgment in *IMG* v *Commission*. In paragraph 48 of the judgment under appeal, the General Court gave a *contra legem* interpretation of Article 68(2) of the implementing measures, by equating the right to submit observations with the right to be heard. In paragraph 51 of the judgment under appeal, the General Court also misinterpreted Article 68 of the implementing measures, which governs the recovery procedure, in so far as the relevant rule does not give rise, for the appellant, to rights or obligations in relation to the submission of evidence in the procedure before the Secretary-General.

Second ground of appeal:

Infringement of the right to a fair trial (Article 6(1) ECHR and Article 47, second paragraph, of the Charter) in the proceedings before the General Court, in so far as the latter rejected the offer of witness evidence from Dr József Virág and Mr László Tibor Erdélyi, without giving any substantive statement of reasons. The decision of the General Court rejecting that offer of evidence deprived the appellant of the possibility of defending himself as regards the substance of the case against him.

Request for a preliminary ruling from the Svea Hovrätt — Patent- och marknadsöverdomstolen (Sweden) lodged on 27 August 2019 — BY v CX

(Case C-637/19)

(2019/C 372/21)

Language of the case: Swedish

Referring court

Svea Hovrätt, Patent- och marknadsöverdomstolen

Parties to the main proceedings

Applicant: BY

Defendant: CX

Questions referred

1. Does the term 'public' in Articles 3(1) and 4(1) of Directive 2001/29/EC ([1]) 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 have a uniform meaning?

2. If question 1 is answered in the affirmative, is a court to be regarded as falling within the scope of the term 'public' within the meaning of those provisions?

3. If question 1 is answered in the negative:

   (a) in the event of communication of a protected work to a court, can that court fall within the scope of the term 'public'?

   (b) in the event of distribution of a protected work to a court, can that court fall within the scope of the term 'public'?

4. Does the fact that national legislation lays down a general principle of access to public documents in accordance with which any person who makes a request can access procedural documents submitted to a court, except where they contain confidential information, affect the assessment of whether submission to a court of a protected work amounts to a 'communication to the public' or a 'distribution to the public'?

([1]) OJ 2001 L 167, p. 10.

Appeal brought on 30 August 2019 by Ja zum Nürburgring eV against the judgment of the General Court (First Chamber, Extended Composition) delivered on 19 June 2019 in Case T-373/15, Nürburgring eV v European Commission

(Case C- 647/19 P)

(2019/C 372/22)

Language of the case: German

Parties

Appellant: Ja zum Nürburgring eV (represented by: D. Frey et M. Rudolph, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

1. set aside the judgment of the General Court of 19 June 2019 in Case T-373/15;

2. annul Commission Decision C(2014) 3634 final of 1 October 2014 in so far as it found that

   a. the company which acquired the assets sold in the tender, Capricorn Nürburgring Besitzgesellschaft GmbH, and its subsidiares are not concerned by any recovery of aid which it incompatible with the internal market and

   b. the sale of the assets of Nürburgring GmbH, Motorsport Resort Nürburgring GmbH and Congress- und Motorsport Hotel Nürburgring GmbH did not amount to State aid to Capricorn Nürburgring Besitzgesellschaft GmbH or its subsidiaries;

3. in the alternative, set aside the judgment under appeal and refer the case back to the General Court

4. order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant relies on five grounds of appeal.

1. The General Court erred in law in finding that there was no effect on the appellant as a competitor:

   The General Court disregarded the pleas in law and arguments advanced by the appellant which are clear from the evidence and therefore breached the obligation to state reasons. The reasoning of the General Court is flawed and, in any event, insufficient. In addition, it breached the rights of the defence and the appellant's right to an effective remedy (Article 47 of the Charter). Furthermore, the General Court erred in interpreting and applying the fourth paragraph of 263 TFEU.

2. The General Court erred in law in finding that there was no effect on the appellant as a trade association:

   The General Court disregarded the pleas in law and arguments advanced by the appellant which are clear from the evidence and therefore breached the obligation to state reasons. The reasoning of the General Court is flawed and, in any event, insufficient. In addition, it also breached in that regard the rights of the defence and the appellant's right to an effective remedy (Article 47 of the Charter). Furthermore, the General Court erred in interpreting and applying the fourth paragraph of 263 TFEU.

3. The General Court erred in procedure and law in finding that the appellant had no standing to bring an action as a competitor nor as a trade association in respect of the second decision at issue:

   For the reasons relating to the first and second grounds of appeal, the General Court erred by finding that the appellant had no standing in respect of the second decision at issue.

4. The General Court erred in law in disregarding the Commission's obligation to initiate the formal investigation procedure regarding the grant of new aid by way of the sale of assets to Capricorn:

   The General Court erred in law in finding, in breach of Articles 107 and 108(2) TFEU, of the obligation to state reasons, of the rights of the defence and of the right to an effective remedy, and in distorting the facts and evidence, that there had been an open, transparent, non-discriminatory and unconditional tender. The market price was not determined in that way. That should have raised doubts which should have led the Commission to initiate the formal investigation procedure.

5. The General Court erred in its legal reasoning in respect of the Commission's failure to state reasons concerning the second decision at issue:

   The General Court erred in disregarding the fact that the Commission breached its obligation to state reasons in respect of the decisions at issue.

Appeal brought on 3 September 2019 by Vialto Consulting Kft. against the judgment of the General Court (First Chamber) delivered on 26 June 2019 in Case T-617/17, Vialto Consulting Kft v European Commission

(Case C-650/19 P)

(2019/C 372/23)

Language of the case: Greek

Parties

Appellants: Vialto Consulting Kft. (represented by: Dimitrios Sigalas, avvocato)

Other party to the proceedings: European Commission

Form of order sought

— Set aside the judgment of the General Court of 26 June, Case T-617/17;

— Order the Commission to pay the costs.

Pleas in law and main arguments

The appellant puts forward three grounds in support of its appeals:

1. The judgment under appeal is vitiated by a distortion of the facts and an error of law in relation to the infringement of Article 7(1) of Regulation No 2185/96. ([1]) The General Court failed to take into account the fact that the real subject matter of the action for damages was the question of whether OLAF had infringed Article 7(1) of Regulation No 2185/96 by asking the appellant to allow it to collect data which were in no way related to its investigation. Nor did the Court take account of the fact that the appellant actually authorised OLAF to investigate all the categories of data it had requested.

2. The judgment under appeal is vitiated by an error of law and a failure to state reasons in relation to the infringement of the principle of the protection of legitimate expectations. The General Court has not clarified which of the three conditions laid down in the case-law concerning the protection of legitimate expectations is not met in the present case.

3. The judgment under appeal is vitiated by a distortion of the facts and an error of law in relation to the infringement of the right to be heard. The General Court failed to take account of the fact that the Commission adopted a position that is binding on the contracting authority, which could result in an act detrimental to the appellant, without the appellant having been heard.

([1]) Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities (OJ 1996 L 292, pag. 2).

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 2 September 2019 — JP v Commissaire général aux réfugiés et aux apatrides

(Case C-651/19)

(2019/C 372/24)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: JP

Defendant: Commissaire général aux réfugiés et aux apatrides

Question referred

Must Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection ([1]) (recast), by virtue of which applicants must be given a right to an effective remedy against decisions 'taken on their application for international protection', and Article 47 of the Charter of Fundamental Rights of the European Union be interpreted as precluding a rule of national procedure, such as Article 39/57 of the Law of 15 December 1980 on entry to the territory, residence, establishment and removal of foreign nationals, read in conjunction with Article 51/2, 5° of the first subparagraph of Article 57/6(3) and Article 57/6/2(1) of that law, establishing a time limit of 10 'calendar' days, starting from the notification of the administrative decision, for bringing an action against a decision declaring a subsequent application for international protection lodged by a third-country national inadmissible, in particular where that notification was made to the Office of the Commissioner General for Refugees and Stateless Persons where the applicant is 'deemed' by law to have elected a domicile?

([1]) OJ 2013 L 180, p. 60.

Appeal brought on 5 September 2019 by NeXovation, Inc. against the judgment of the General Court (First Chamber, Extended Composition) delivered on 19 June 2019 in Case T-353/15: NeXovation v Commission

(Case C-665/19 P)

(2019/C 372/25)

Language of the case: English

Parties

Appellant: NeXovation, Inc. (represented by: A. von Bergwelt, M. Nordmann, L. Hettstedt, Rechtsanwälte)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside points 3 and 4 of the operative part of the judgment under appeal, and annul Article 3(2) and the final indent of Article 1 of the Commission Decision ([1]) of 1 October 2014 on the State aid SA.31550 implemented by Germany for Nurburgring (with a corrigendum of 13 April 2015);

— in the alternative, set aside points 3 and 4 of the operative part of the judgment under appeal and refer the case back to the General Court;

— order the Commission to pay the costs.

Pleas in law and main arguments

The appeal is based on two grounds of appeal:

With respect to the first contested decision the General Court erred in applying Article 263(4) TFEU since the appellant was individually concerned. The General Court misjudged that the case does not reflect the typical scenario in which competition between several suppliers of goods is affected but between bidders, which request a certain good.

With respect to the second contested decision the General Court erred in applying Articles 107(1) and 296(2) TFEU as well as Articles 4(3) and 20(2) of the procedural Regulation No (EU) 659/1999 ([2]) and the principle of a diligent and impartial investigation.

([1]) Commission Decision (EU) 2016/151 of 1 October 2014 on the State aid SA.31550 (2012/C) (ex 2012/NN) implemented by Germany for Nürburgring (notified under document C(2014) 3634) (OJ 2016, L 34, p. 1).
([2]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 93 of the EC Treaty (OJ 1999, L 83, p. 1).

Request for a preliminary ruling from the Conseil du Contentieux des étrangers (Belgium) lodged on 10 September 2019 — X v État belge

(Case C-671/19)

(2019/C 372/26)

Language of the case: French

Referring court

Conseil du Contentieux des étrangers

Parties to the main proceedings

Applicant: X

Defendant: État belge

Questions referred

1. Is the statement contained in Article 34(5) of Directive 2016/801 ([1]) that the appeal provided for in that article is to be organised 'in accordance with national law' to be interpreted as meaning that it is for the national legislature alone to determine the procedural rules governing that appeal, without the national court being required to verify whether those rules are consistent with the right to an effective remedy within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union?

2. (a) If the answer to the first question is in the negative, must the appeal provided for in Article 34(5) of Directive 2016/801, in order to be effective within the meaning of Article 47 of the Charter, include a possibility of having access in all cases to an exceptional appeal procedure, conducted as a matter of extreme urgency, where the person concerned demonstrates that he has exercised all due diligence and that compliance with the time limits imposed in order to conduct an ordinary procedure could hamper the pursuit of the studies in question?

   (b) If the answer to that question is in the negative, must the same negative answer be given where failure to adopt a decision in a short period of time risks causing the person concerned irretrievably to lose a year of study?

3. If the answer to part (a) or part (b) of the second question is in the affirmative, is the national court required to give preference to an interpretation of the law which is consistent with the purpose of Directive 2016/801 in order to arrive at a solution compatible with the objective pursued by that directive, by agreeing to examine as a matter of extreme urgency an application for suspension of enforcement of a decision as referred to in Article 20 of that directive, even though the *travaux préparatoires* for the law might suggest that that was not the legislature's intention?

4. If the answer to the first question is in the negative, does the appeal referred to in Article 34(5) of Directive 2016/801 require the Member States, in order to comply with Article 47 of the Charter, to provide that, in certain circumstances, the court may order the authority to issue the visa?

([1]) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ 2016 L 132, p. 21).

Request for a preliminary ruling from the Conseil du Contentieux des étrangers (Belgium) lodged on 10 September 2019 – X v État belge

(Case C-672/19)

(2019/C 372/27)

Language of the case: French

Referring court

Conseil du Contentieux des étrangers

Parties to the main proceedings

Applicant: X

Defendant: État belge

Questions referred

1. Is the statement contained in Article 34(5) of Directive 2016/801 ([1]) that the appeal provided for in that article is to be organised 'in accordance with national law' to be interpreted as meaning that it is for the national legislature alone to determine the procedural rules governing that appeal, without the national court being required to verify whether those rules are consistent with the right to an effective remedy within the meaning of Article 47 of the Charter of Fundamental Rights of the European Union?

2. (a) If the answer to the first question is in the negative, must the appeal provided for in Article 34(5) of Directive 2016/801, in order to be effective within the meaning of Article 47 of the Charter, include a possibility of having access in all cases to an exceptional appeal procedure, conducted as a matter of extreme urgency, where the person concerned demonstrates that he has exercised all due diligence and that compliance with the time limits imposed in order to conduct an ordinary procedure could hamper the pursuit of the studies in question?

   (b) If the answer to that question is in the negative, must the same negative answer be given where failure to adopt a decision in a short period of time risks causing the person concerned irretrievably to lose a year of study?

3. If the answer to part (a) or part (b) of the second question is in the affirmative, is the national court required to give preference to an interpretation of the law which is consistent with the purpose of Directive 2016/801 in order to arrive at a solution compatible with the objective pursued by that directive, by agreeing to examine as a matter of extreme urgency an application for suspension of enforcement of a decision as referred to in Article 20 of that directive, even though the *travaux préparatoires* for the law might suggest that that was not the legislature's intention?

4. If the answer to the first question is in the negative, does the appeal referred to in Article 34(5) of Directive 2016/801 require the Member States, in order to comply with Article 47 of the Charter, to provide that, in certain circumstances, the court may order the authority to issue the visa?

([1]) Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing (OJ 2016 L 132, p. 21).

Appeal brought on 12 September 2019 by Fulmen against the judgment of the General Court (First Chamber) delivered on 2 July 2019 in Case T-405/15, Fulmen v Council

(Case C-680/19 P)

(2019/C 372/28)

Language of the case: French

Parties

Appellant: Fulmen (represented by: A. Bahrami, N. Korogiannakis, lawyers)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

Primarily:

— set aside the judgment under appeal in part;

— give final judgment in the matter;

— order the Council to pay Fulmen the sum of EUR 6 456 507 in respect of material damage and EUR 100 000 in respect of non-material damage, together with default interest;

— order the Council to pay all of the costs.

In the alternative:

— set aside the judgment under appeal in part;

— refer the case back to the General Court;

— order the Council to pay all of the costs.

Pleas in law and main arguments

Concerning the *material damage*, the General Court, in the first place, erred in law, infringed the principle of full reparation and deprived Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of their practical effect. The standard of proof required by the General Court made any compensation for the harm suffered impossible, despite the existence of a sufficiently serious and flagrant breach of EU law. In the second place, the judgment under appeal was vitiated by an error of law and by contradictory reasoning. In the third place, the General Court distorted the evidence and the facts.

Concerning the *non-material damage*, the judgment under appeal contains no statement of reasons as regards the criteria taken into account in order to assess *ex aequo et bono* the amount of the compensation.

Appeal brought on 12 September 2019 by Fereydoun Mahmoudian against the judgment of the General Court (First Chamber) delivered on 2 July 2019 in Case T-406/15, Mahmoudian v Council

(Case C-681/19 P)

(2019/C 372/29)

Language of the case: French

Parties

Appellant: Fereydoun Mahmoudian (represented by: A. Bahrami, N. Korogiannakis, lawyers)

Other parties to the proceedings: Council of the European Union, European Commission

Form of order sought

Primarily:

— set aside the judgment under appeal in part;

— give final judgment in the matter;

— order the Council to pay the appellant the sum of EUR 966 581 in respect of material damage and EUR 500 000 in respect of non-material damage, together with default interest;

— order the Council to pay all of the costs.

In the alternative:

— set aside the judgment under appeal in part;

— refer the case back to the General Court;

— order the Council to pay all of the costs.

Pleas in law and main arguments

Concerning the *material damage*, the General Court, in the first place, erred in law, infringed the principle of full reparation and deprived Article 340(2) TFEU and Article 41(3) of the Charter of Fundamental Rights of their practical effect. The standard of proof required by the General Court made any compensation for the harm suffered impossible, despite the existence of a sufficiently serious and flagrant breach of EU law. In the second place, the judgment under appeal was vitiated by an error of law and by contradictory reasoning. In the third place, the General Court distorted the evidence and the facts.

Concerning the *non-material damage*, the judgment under appeal contains no statement of reasons as regards the criteria taken into account in order to assess *ex aequo et bono* the amount of the compensation.

Appeal brought on 18 September 2019 by the Federal Republic of Germany against the judgment of the General Court (First Chamber) delivered on 9 July 2019 in Case T-53/18, Federal Republic of Germany v European Commission

(Case C-688/19 P)

(2019/C 372/30)

Language of the case: German

Parties

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

Other party: European Commission

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court of the European Union delivered on 9 July 2019 in Case T-53/18, *Germany* v *Commission*;

— annul Commission Decision (EU) 2017/1995 of 6 November 2017 to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 13341:2005 + A1:2011 on 'Static thermoplastic tanks for above-ground storage of domestic heating oils, kerosene and diesel fuels' in accordance with Regulation (EU) No 305/2011 of the European Parliament and of the Council; ([1])

— annul Commission Decision (EU) 2017/1996 of 6 November 2017 to maintain in the *Official Journal of the European Union* the reference of harmonised standard EN 12285-2:2005 on 'Workshop fabricated steel tanks' in accordance with Regulation No 305/2011; ([2])

— in the alternative to (2) and (3), respectively, refer the case back to the General Court;

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

Grounds of appeal and main arguments

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

First, the judgment under appeal infringes Article 18(2), in conjunction with Article 17(5), of Regulation No 305/2011. ([3]) The General Court disregarded the fact that those provisions both empowered and required the Commission to adopt one of the measures suggested by the Federal Republic of Germany.

Second, the judgment under appeal infringes Article 18(2), in conjunction with Article 3(1) and (2) and Article 17(3), of Regulation No 305/2011. The General Court disregarded the fact that those provisions required the Commission to examine whether the standards at issue jeopardise compliance with the basic requirements for construction works.

([1]) OJ 2017 L 288, p. 36.
([2]) OJ 2017 L 288, p. 39.
([3]) Regulation (EU) No 305/2011 of the European Parliament and of the Council of 9 March 2011 laying down harmonised conditions for the marketing of construction products and repealing Council Directive 89/106/EEC (OJ 2011 L 88, p. 5).

Appeal brought on 18 September 2019 by VodafoneZiggo Group BV against the order of the General Court (First Chamber) delivered on 9 July 2019 in Case T-660/18: VodafoneZiggo Group BV v Commission

(Case C-689/19 P)

(2019/C 372/31)

Language of the case: English

Parties

Appellant: VodafoneZiggo Group BV (represented by: W. Knibbeler, A.A.J. Pliego Selie, B.A. Verheijen, advocaten)

Other party to the proceedings: European Commission

Form of order sought

The applicant claims that the Court should:

— set aside the order of the General Court of 9 July 2019 in Case T-660/18 (the Contested Order);

— refer the case back to the General Court for consideration;

— reserve the costs of the present proceedings.

Pleas in law and main arguments

First ground of appeal: errors of law in the General Court's conclusion that decision C(2018) 5848 final of the European Commission (the Contested Decision) does not produce binding legal effects.

First limb of the first ground: the requirement for national regulatory authorities to 'take utmost account of' comments of the European Commission made pursuant to Article 7(3) of Directive 2002/21/EC ([1]) imposes a binding legal obligation upon those authorities.

Second limb of the first ground: comments made pursuant to Article 7(3) of Directive 2002/21/EC amount to an authorisation, because the European Commission is thereby choosing to conclude its investigation without using its right of veto.

Third limb of the first ground: the Contested Decision cannot be qualified as a preparatory act because the procedure the European Commission follows is separate and distinct from the national procedure.

Fourth limb of the first ground: the General Court, by deeming the Commission's use of the word 'decision' to be 'inappropriate', exceeds its competence of judicial review.

Fifth limb of the first ground: the Contested Order suffers from a lack of reasoning in its statement that the subject matter of the Contested Decision would be 'irrelevant'.

Second ground of appeal: errors of procedure by failing to address arguments capable of materially affecting the outcome of the case.

First limb of the second ground: regarding the argument that an opportunity for BEREC to comment was foreclosed.

Second limb of the second ground: regarding the argument that the foreclosure of an opportunity to be heard cannot be remedied by other, unrelated opportunities to be heard.

Third ground of appeal: errors of law in the General Court's conclusion that the appellant's fundamental rights would not be infringed. The appellant enjoys fundamental rights under Article 47 of the Charter of Fundamental Rights of the European Union, in light of which its arguments and admissibility must be interpreted. Moreover, the procedure for a preliminary ruling cannot prevent the infringement.

([1]) 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).

Appeal brought on 18 September 2019 by Italmobiliare SpA and Others against the judgment of the General Court (Seventh Chamber) delivered on 11 July 2019 in Case T-523/15 Italmobiliare SpA and Others v Commission

(Case C-694/19P)

(2019/C 372/32)

Language of the case: Italian

Parties

Appellants: Italmobiliare SpA, Sirap-Gema SpA, Sirap France SAS, Petruzalek GmbH, Petruzalek Kft., Petruzalek sro, Petruzalek sro (represented by: F. Moretti, avvocatessa)

Other party to the proceedings: European Commission

Form of order sought

The appellants claim that the Court should:

— set aside the judgment of the General Court in full or in part and, consequently, cancel or reduce the fines imposed on the appellants; or

— in the alternative, redetermine the fines, in the exercise of its unlimited jurisdiction, with all the consequences that that may have on the validity of the decision.

In any event, order the Commission to pay the costs of the present proceedings and of those at first instance.

Pleas in law and main arguments

In support of the action, the appellants rely on four grounds of appeal.

First ground of appeal: infringement of Article 101 TFEU, misapplication or failure to apply the relevant case-law principles relating to the presumption of parental liability, misuse of power, failure to state reasons, infringement of fundamental rights by the General Court in relation to the attribution of liability to Italmobiliare for the alleged misconduct. The appellants claim in particular that, in any event, such an application of the presumption infringes the principle of legal certainty, the principle that penalties must be specific to the offender and the principle of presumption of innocence laid down in Article 6(2) and Article 7 of the European Convention on Human Rights (ECHR) and Articles 48 and 49 of the Charter of Fundamental Rights of the European Union, the right to property laid down in Article 1 of the Additional Protocol to the ECHR, Article 14 of the ECHR and Articles 17 and 21 of the Nice Charter, as well as the principles of non-discrimination and equal treatment.

Second ground of appeal: infringement and/or misinterpretation and misapplication of the Leniency Notice by the General Court; unlawful grant of immunity to another undertaking and existence of the appellants' direct interest in its annulment.

Third ground of appeal: infringement of law and/or infringement of essential procedural requirements by the General Court in that it wrongly considered the fines to be proportionate and adequate.

Fourth ground of appeal: the appellants ask the Court of Justice to exercise its unlimited jurisdiction in accordance with Article 31 of Regulation No 1/2003 ([1]) and redetermine the fines with all the consequences that that may have on the decision.

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

GENERAL COURT

Action brought on 16 August 2019 – Micreos Food Safety v Commission

(Case T-568/19)

(2019/C 372/33)

Language of the case: English

Parties

Applicant: Micreos Food Safety BV (Wageningen, Netherlands) (represented by: S. Pappas, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decisions of the Director General for Health and Food Safety of 17 June 2019, forming a unity, by which the Commission: a) definitively refrained from the pursuance of the relevant Comitology procedure in relation to the Commission Draft Regulation 'permitting the use of Listex™ P100 for the reduction of Listeria monocytogenes on Ready-To-Eat products of animal origin' as a decontaminant under Regulation (EC) 853/2004 ([1]); b) refused to examine such use of Listex™ P100 as a non-decontaminating processing aid, and; c) prohibited for the first time the further placing on the market of Listex™ P100 being on the market since 2006 for use as a processing aid on animal-derived Ready-To-Eat food; and

— order the defendant to pay its own costs and the costs of the applicant in the present proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision as far as it rejected the application of the applicant to get recognition of Listex™ P100 as a decontaminant is taken without prior vote in SCoPAFF contrary to Articles 289 (1) and 291 (2) TFEU and Articles 5 and 6 of Regulation (EU) 182/2011 ([2]).

2. Second plea in law, alleging that the contested decision is illegal on the ground that it was adopted on the basis of political considerations despite the fact that it is an implementing act.

3. Third plea in law, alleging that the interpretation of Article 3(2) of Regulation (EC) 853/2004 was wrong.

4. Fourth plea in law, alleging lack of reasoning and in any event illegal reasoning by not distinguishing between a decontaminant and a non-decontaminating processing aid.

5. Fifth plea in law, alleging failure to consult SCoPAFF as far as the applicant requested recognition of Listex™ P100 as a non-decontaminating processing aid.

6. Sixth plea in law, alleging an infringement of Article 168 (3) TFEU by failing to ensure via Listex™ P100 protection and prevention from Listeria.

7. Seventh plea in law, alleging an infringement of Article 14(9) of Regulation (EC) 178/2002 ([3]) and of the fundamental freedom of free circulation of goods.

8. Eighth plea in law, alleging an infringement of legal expectations of the applicant as since 2006 Listex™ P100 was in the market and in 2016 EFSA declared it safe.

([1]) Regulation (EC) No 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin (OJ 2004 L 139, p. 55).
([2]) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ 2011 L 55, p. 13).
([3]) Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ 2002 L 31, p. 1).

Action brought on 5 September 2019 — Bartolomé Alvarado and Grupo Preciados Place v EUIPO — Alpargatas (ALPARGATUS PASOS ARTESANALES)

(Case T-606/19)

(2019/C 372/34)

Language in which the application was lodged: Spanish

Parties

Applicants: José Fernando Bartolomé Alvarado (Madrid, Spain) and Grupo Preciados Place, SL (Madrid, Spain) (represented by: P. García Remacha, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Alpargatas SA (São Paulo, Brazil)

Details of the proceedings before EUIPO

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

Trade mark at issue: Figurative mark ALPARGATUS PASOS ARTESANALES — European Union trade mark No 14 750 624

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the First Board of Appeal of EUIPO of 20 June 2019 in Case R 1825/2018-1

Form of order sought

The applicants claim that the Court should:

— Find that the action brought against the decision of the First Board of Appeal dated 20 June 2019, which was notified to the applicants on 5 July 2019, has been submitted in due form and within the corresponding deadline; and, by way of the appropriate procedural steps, give judgment upholding the present action and, accordingly, annul the contested decision, reject any and all of the claims of the company ALPARTAGAS S.A., and order that the registration of EU trade mark No 14 750 624 be maintained, with all the legal consequences associated therewith.

Pleas in law

— Challenge to the contested decision with regard to the *res judicata* relied on by the applicant;

— Challenge to the Office's assessment of the similarity between the opposing marks;

— The decision creates a monopoly of the name 'alpargata', thereby infringing the trade mark regime and the position adopted by the Office itself;

— No likelihood of association or confusion.

Action brought on 5 September 2019 — Itinerant Show Room v EUIPO (FAKE DUCK)

(Case T-607/19)

(2019/C 372/35)

Language of the case: Italian

Parties

Applicant: Itinerant Show Room Srl (San Giorgio in Bosco, Italy) (represented by: E. Montelione, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for European Union figurative mark FAKE DUCK — Application for registration No. 17 946 879

Contested decision: Decision of the Second Board of Appeal of EUIPO of 1 July 2019 in Case R 830/2019-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Pleas in law

— Failure to take into account the inherent distinctive character of the mark FAKE DUCK;

— Failure to take into account the complexity of the mark FAKE DUCK and the picture of an egg;

— Misapplication of the principle of equal treatment;

— Misapplication of the principle of legality.

Action brought on 6 September 2019 — Veronese Design Company v EUIPO — Veronese (VERONESE)

(Case T-608/19)

(2019/C 372/36)

Language in which the application was lodged: French

Parties

Applicant: Veronese Design Company Ltd (Kowloon, Hong Kong, China) (represented by: B. Lafont, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Veronese SAS (Paris, France)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark VERONESE — European Union trade mark No 8 831 844

Procedure before EUIPO: Proceedings for a declaration of invalidity

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 18 June 2019 in Case R 2434/2018-5

Form of order sought

The applicant claims that the Court should:

— find that the application and the annexes thereto are admissible;

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

Infringement of Article 60(1), read in conjunction with Article 8(1) and (2), of Regulation No 2017/1001 of the European Parliament and of the Council.

Action brought on 19 September 2019 — Daw v EUIPO (SOS Innenfarbe)

(Case T-625/19)

(2019/C 372/37)

Language of the case: German

Parties

Applicant: Daw SE (Ober-Ramstadt, Germany) (represented by: A. Haberl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Registration of the European Union word mark 'SOS Innenfarbe' — Application for registration No 17 870 690

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 in Case R 277/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the Decision of EUIPO of 7 January 2019 in so far as it rejects the application for registration of the mark 'SOS Innenfarbe' in respect of the following goods in Class 2:

'Paints, lacquers, lasures, paints, preservatives against rust; Primers; Dyes, colorants, paint paste, mordants; Thickeners for colours; Fixing solutions, siccatives for colours; Thinners and binders for paints, lacquers and coatings; Solvents for thinning paints; Preservatives for wood, wood mordants and wood preservatives; Coatings, including textured; bactericides and/or fungicides; Corrosion inhibiting admixtures; Protective preparations for metals';

— order EUIPO to allow the application for registration to be published, as lodged;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and (c) and (2) of Regulation No 2017/1001.

Action brought on 19 September 2019 — Daw v EUIPO (SOS Loch- und Rissfüller)

(Case T-626/19)

(2019/C 372/38)

Language of the case: German

Parties

Applicant: Daw SE (Ober-Ramstadt, Germany) (represented by: A. Haberl, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Registration of the European Union word mark 'SOS Loch- und Rissfüller' — Application for registration No 17 870 692

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 18 July 2019 in Case R 278/2019-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the Decision of EUIPO of 7 January 2019 in so far as it rejects the application for registration of the mark 'SOS Loch- und Rissfüller' in respect of the following goods:

'Class 1 — Chemicals used in industry; Masonry preservatives and dampers, roof tiles, cements and concrete, except paints and oils; Synthetic resins, synthetic resins and unprocessed plastics; Solvents (chemical -); Fillers for use in coating paints (not included in other classes)

Class 2 — Raw natural resins

Class 19 — Mortar for building construction; Quartz; Coatings (building materials); Cleaning preparations; Compositions for building devices; Filaments being building materials; Fabrics for building purposes, not of metal or predominantly non-metallic materials, in particular stabilising fabric';

— order EUIPO to allow the application for registration to be published, as lodged;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and (c) and (2) of Regulation No 2017/1001.

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