According to the appellant, the General Court may annul or amend the decision only where, at the time it was adopted, it was vitiated by one of the grounds for annulment or amendment set out in Article 65(2) of Regulation (EC) No 207/2009. The General Court infringed Article 65(2) of that regulation by misconstruing the scope of its review of legality, which must be restricted to matters of law (including the case-law existing at the time when the decision was adopted) and of fact put forward before the Board of Appeal. The General Court failed to establish that the Board of Appeal had committed an error at the time when the contested decision was adopted. The General Court substituted its own assessment for that of the Board of Appeal and carried out an assessment of the judgment of the French Court of Cassation of 10 July 2012 about which that Board was unable to take a position.

Furthermore, the General Court distorted the judgment of the French Court of Cassation of 10 July 2012 by declaring that it was ‘devoid of any ambiguity regarding the scope of protection afforded to a company name and which may be applied generally’ and by granting it a scope that it clearly did not have in relation to the other documents in the file, in the context of Article L 711-4 of the French Intellectual Property Code.

Finally, the General Court committed an error by assessing the areas of activity of Forge de Laguiole in the light of the criteria of trade mark law. The General Court should have assessed the areas of activity of Forge de Laguiole with reference to the purpose and use of the goods sold by that company, and not only in the light of the criterion of the nature of the product.


Reference for a preliminary ruling from Supreme Court (Ireland) made on 30 December 2014 — James Elliott Construction Limited v Irish Asphalt Limited
(Case C-613/14)
(2015/C 096/07)
Language of the case: English

Referring court
Supreme Court, Ireland

Parties to the main proceedings
Applicant: James Elliott Construction Limited
Defendant: Irish Asphalt Limited

Questions referred
1 (a) Where the terms of a private contract oblige a party to supply a product produced in accordance with a national standard, itself adopted in implementation of a European standard made pursuant to a mandate issued by the European Commission under the provisions of the Construction Products Directive (89/106/EEC) (1), is the interpretation of the said Standard a matter upon which a preliminary ruling may be sought from the Court of Justice of the European Union pursuant to Article 267 TFEU?

(b) If the answer to question 1(a) is yes, does EN13242:2002 require that compliance, or breach of the said Standard, be established only by evidence of testing in accordance with the (unmandated) standards adopted by CEN (Le Comité Européen de Normalisation) and referred to in EN13242:2002, and where such tests are carried out at the time of production and/or supply; or may breach of the Standard (and accordingly breach of contract), be established by evidence of tests conducted later, if the results of such tests are logically probative of breach of the Standard?

2 When hearing a private-law claim for breach of contract in respect of a product manufactured pursuant to a European standard issued pursuant to a mandate from the European Commission under the Construction Products Directive, is a national court obliged to disapply the provisions of national law implying terms as to merchantability and fitness for purpose or quality, on the grounds that either the statutory terms, or their application, create standards or impose technical specifications or requirements which have not been notified in accordance with the provisions of the Technical Standards Directive (98/34/EC) (2)?
3 Is a national court hearing a claim for breach of a private contract alleged to arise from a breach of a term as to merchantability or fitness for use (implied by statute in a contract between the parties and not modified or disappplied by them) in respect of a product produced in accordance with EN13242:2002, obliged to presume that the product is of merchantable quality and fit for its purpose, and if so, may such a presumption only be rebutted by proof of non-compliance with EN13242:2002 by tests carried out in accordance with the tests and protocols referred to in EN13242:2002 and carried out at the time of supply of the product?

4 If the answers to questions 1(a) and 3 are both yes, is a limit for total sulphur content of aggregates prescribed by, or under, EN13242:2002 so that compliance with such a limit was required, inter alia, to give rise to any presumption of merchantability or fitness for use?

5 If the answers to 1(a) and 3 are both yes, is proof that the product bore the ‘CE’ marking necessary in order to rely on the presumption created by Annex ZA to EN13242:2002 and/or Article 4 of the Construction Products Directive (89/106/EEC)?


Request for a preliminary ruling from the Sofiyski gradski sad (Bulgaria) lodged on 31 December 2014 — Criminal proceedings against Atanas Ognyanov
(Case C-614/14)
(2015/C 096/08)
Language of the case: Bulgarian

Referring court
Sofiyski gradski sad

Parties to the main proceedings

Sentenced person: Atanas Ognyanov

Other party to the proceedings: Sofyiska gradska prokuratura

Questions referred

1. Does it constitute an infringement of EU law (second paragraph of Article 267 TFEU, in conjunction with Article 94 of the Rules of Procedure of the Court of Justice, Articles 47 and 48 of the Charter of Fundamental Rights of the European Union or other applicable provisions) if the court which submitted the request for a preliminary ruling allows the proceedings to continue before it after delivery of the preliminary ruling and delivers a decision on the merits of the case without disqualifying itself, a ground for such disqualification being that the court had expressed a preliminary view on the merits of the case in the request for a preliminary ruling (in that it considered certain facts to have been established and a certain legal provision to be applicable to those facts)?

The question is referred on the assumption that all procedural provisions protecting the parties’ rights to adduce evidence and to make submissions were complied with in the determination of the facts and applicable law for the purposes of submitting the request for a preliminary ruling.