ISSN 1725-2423

Official Journal of the European Union

C 155

Volume 48

English edition

Information and Notices

25 June 2005

Notice No | Contents | Page

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

EN

(Continued overleaf)

EN

I

(Information)

COURT OF JUSTICE

COURT OF JUSTICE

JUDGMENT OF THE COURT

(First Chamber)

of 17 March 2005

in Case C-285/03: Hellenic Republic against Commission of the European Communities [1]

(EAGGF — Clearance of accounts — Arable crops — Financial years 2000 and 2001)

(2005/C 155/01)

(Language of the case: Greek)

In Case C-285/03, Hellenic Republic (Agents: V. Kontolaimos and I. Chalkias) against the Commission of the European Communities (Agents: M. Condou-Durande, assisted by N. Korogiannakis) — application for annulment under Article 230 EC, brought on 1 July 2003 — the Court (First Chamber), composed of P. Jann (Rapporteur), President of the Chamber, K. Lenaerts, J.N. Cunha Rodrigues, E. Juhász and M. Ilešič, Judges; A. Tizzano, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, gave a judgment on 17 March 2005, in which it:

1. *Dismisses the action;*

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

[1] OJ C 213 of 06.09.2003.

Reference for a preliminary ruling from the Unabhängiger Verwaltungssenat des Landes Oberösterreich by judgment of that court of 4 March 2005 in Manfred Seidl v Bezirkshauptmannschaft Grieskirchen

(Case C-117/05)

(2005/C 155/02)

(Language of the case: German)

Reference has been made to the Court of Justice of the European Communities by judgment of the Unabhängiger Verwaltungssenat des Landes Oberösterreich (Austria) of 4 March 2005, received at the Court Registry on 10 March 2005, for a preliminary ruling in the proceedings between Manfred Seidl and Bezirkshauptmannschaft Grieskirchen on the following question:

Are Articles 43 et seq. of the Treaty establishing the European Community to be interpreted as meaning that a requirement of the law of the Member State of establishment that an applicant for a driving school permit who is a national of a Member State and wishes to obtain a driving school permit in another Member State may not possess any other driving school permit constitutes an inadmissible restriction on the freedom of establishment guaranteed by Article 43 of the Treaty establishing the European Community?

Reference for a preliminary ruling from the Gerechtshof te 's-Gravenhage by judgment of that court of 3 March 2005 in Federatie Nederlandse Vakbeweging v. Staat der Nederlanden

(Case C-124/05)

(2005/C 155/03)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by judgment of the Gerechtshof te 's-Gravenhage (Netherlands) of 3 March 2005, received at the Court Registry on 16 March 2005, for a preliminary ruling in the proceedings between Federatie Nederlandse Vakbeweging and the Netherlands State on the following question:

Is it compatible with Community law, and in particular with Article 7(2) of Council Directive 93/104/EC ([1]) of 23 November 1993, for a legislative provision of a Member State to provide for the possibility of a written agreement during a contract of employment to the effect that an employee who has, for one year, not taken his minimum annual leave, or has not taken that minimum leave in full, may receive financial compensation in respect of that leave in a subsequent year?

The question is based on the premise that the compensation is not given in respect of the employee's entitlement to minimum leave in the current year or in the years following thereon.

([1]) Directive 93/104/EC was replaced by 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 of 18.11.2003, p. 9).

Action brought on 1 April 2005 by Commission of the European Communities against Ireland

(Case C-148/05)

(2005/C 155/04)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 1 April 2005 by the Commission of the European Communities, represented by Barry Doherty and Donatella Recchia, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that Ireland, by failing

   a) in accordance with Article 4 of Council Directive 79/923/EEC ([1]), to designate all shellfish waters requiring designation,

   b) in accordance with Article 3 of the same directive, to set all the required values in respect of shellfish waters designated or requiring designation pursuant to Article 4,

   c) in accordance with Article 5 of the same directive, to take all necessary measures to establish pollution reduction programmes for waters which should have been designated pursuant to Article 4 but were not designated,

   has failed to comply with its obligations under those Articles of the said Directive;

   and

2. order Ireland to pay the costs.

Pleas in law and main arguments

The Commission maintains that Ireland has breached Council Directive 79/923/EEC on the quality required of shellfish waters by failing:

a) in accordance with Article 4 of the directive, to designate all shellfish waters requiring designation;

b) in accordance with Article 3 of the directive, to set all the required values in respect of shellfish waters designated or requiring designation pursuant to Article 4; and

c) in accordance with Article 5 of the directive, to take all necessary measures to establish pollution reduction programmes for waters requiring designation pursuant to Article 4.

([1]) Council Directive 79/923/EEC of 30 October 1979 on the quality required of shellfish waters, OJ L 281, 10.11.1979, p. 47.

Reference for a preliminary ruling from the Rechtbank 's-Hertogenbosch by order of that court of 23 March 2005 in Jean Leon Van Straaten v Netherlands State and Italian Republic

(Case C-150/05)

(2005/C 155/05)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Rechtbank 's-Hertogenbosch (Netherlands) of 23 March 2005, received at the Court Registry on 23 March 2005, for a preliminary ruling in the proceedings between Jean Leon Van Straaten and the Netherlands State and the Italian Republic on the following questions:

1. What is to be understood by *the same acts* within the meaning of Article 54 of the Convention implementing the Schengen Agreement (CISA)? ([1]) (Is having at one's disposal approximately 1 000 grams of heroin in the Netherlands in or around the period from 27 to 30 March 1983 the same act as being in possession of approximately five kilograms of heroin in Italy on or about 27 March 1983, regard being had to the fact that the consignment of heroin in the Netherlands formed part of the consignment of heroin in Italy? Is exporting a consignment of heroin from Italy to the Netherlands the same act as importing the same consignment of heroin from Italy into the Netherlands, regard also being had to the fact that Mr Van Straaten's fellow accused in the Netherlands and Italy are not entirely the same? Having regard to the acts as a whole, consisting of possessing the heroin in question in Italy, exporting it from Italy, importing it into the Netherlands and having it at one's disposal in the Netherlands, are those 'the same acts'?)

2. Is a person's *trial disposed of*, for the purposes of Article 54 of the CISA, if the charge brought against that person has been declared not to have been legally and satisfactorily proved and that person has been acquitted on that charge by way of a judgment?

([1]) The Schengen acquis – Agreement between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders (OJ L 239 of 22 September 2000, pp. 13 to 18).

Reference for a preliminary ruling from the Rechtbank (District Court) Amsterdam by order of that court of 4 April 2005 in J.J. Kersbergen-Lap and D. Dams-Schipper v Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen

(Case C-154/05)

(2005/C 155/06)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by order of the Rechtbank (District Court) Amsterdam (Netherlands) of 4 April 2005, received at the Court Registry on 6 April 2005, for a preliminary ruling in the proceedings between J.J. Kersbergen-Lap and D. Dams-Schipper and Raad van Bestuur van het Uitvoeringsinstituut Werknemersverzekeringen on the following question:

'Must a benefit under the Wajong, listed in Annex IIa to Regulation No 1408/71 ([1]), be deemed to be a special non-contributory benefit, as referred to in Article 4(2)a of Regulation No 1408/71 with the result that only the coordinating provision introduced by Article 10a of Regulation No 1408/71 must be applied to persons such as the plaintiffs in the main proceedings and the Wajong benefit cannot therefore be paid to a person residing outside the Netherlands?'

([1]) Council Regulation (EEC) No 1247/92 of 30 April 1992 amending 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 (OJ L 136, 19/05/1992 p. 1)

Reference for a preliminary ruling from the Commissione Tributaria Regionale di Firenze, Sezione 33, by order of that court of 23 March 2005 in the proceedings between Villa Maria Beatrice Hospital Srl and Agenzia Entrate — Ufficio Firenze 1

(Case C-155/05)

(2005/C 155/07)

(Language of the case: Italian)

Reference has been made to the Court of Justice of the European Communities by order of the Commissione Tributaria Regionale di Firenze, Sezione 33 (Florence Regional Tax Court, Section 33) (Italy) of 23 March 2005, received at the Court Registry on 6 April 2005, for a preliminary ruling in the proceedings between Villa Maria Beatrice Hospital Srl and Agenzia Entrate — Ufficio Firenze 1 on the following question:

Is paragraph 27d of Article 10 of Presidential Decree No 633 of 26 October 1972 compatible with subparagraph (c) of Article 13B ('Other exemptions') of Sixth Council Directive 77/388/EEC of 17 May 1977? [1]

[1] OJ L 145 of 13.06.1977, p. 1.

Reference for a preliminary ruling from the Audiencia Provincial de Madrid by order of that court of 15 February 2005 in the proceedings between Elisa María Mostaza Claro v Centro Movil Milenium, S.L.

(Case C-168/05)

(2005/C 155/08)

(Language of the case: Spanish)

Reference has been made to the Court of Justice of the European Communities by order of the Audiencia Provincial de Madrid (Spain) of 15 February 2005, received at the Court Registry on 14 April 2005, for a preliminary ruling in the proceedings between Elisa María Mostaza Claro and Centro Movil Milenium, S.L. on the following question:

May the protection of consumers under Council Directive 93/13/EEC [1] of 5 April 1993 on unfair terms in consumer contracts require the court hearing an action for annulment of an arbitration award to determine whether the arbitration agreement is void and to annul the award if it finds that that arbitration agreement contains an unfair term to the consumer's detriment, when that issue is raised in the action for annulment but was not raised by the consumer in the arbitration proceedings?

[1] OJ L 95 of 21. 4. 1993, p. 29.

Reference for a preliminary ruling from the Conseil d'Etat (France) by order of that court of 15 December 2004 in Societe Denkavit International BV and Denkavit France Sarl v Minister for Economic Affairs, Finance and Industry

(Case C-170/05)

(2005/C 155/09)

(Language of the case: French)

Reference has been made to the Court of Justice of the European Communities by order of the Conseil d'Etat (France) of 15 December 2004, received at the Court Registry on 15 December 2004, for a preliminary ruling in the proceedings between Societe Denkavit International BV and Denkavit France Sarl and Minister for Economic Affairs, Finance and Industry on the following questions:

1. Is a system which imposes the burden of taxation on a parent company in receipt of dividends which is not domiciled in France, while relieving parent companies which are domiciled in France of a similar burden, open to challenge in the light of the principle of freedom of establishment?

2. Is such a system of deduction at source itself open to challenge in the light of the principle of freedom of establishment, or, where a taxation agreement between France and another Member State authorising that deduction at source provides for the tax due in that other Member State to be set off against the tax charged in accordance with the disputed system, must that agreement be taken into account in assessing the compatibility of the system with the principle of freedom of establishment?

3. In the event that the second alternative set out at 2 above is held to apply, is the existence of the aforementioned agreement sufficient to ensure that the disputed system may be regarded merely as a means of apportioning the taxable item between the two States concerned without any effect on the undertakings, or must the fact that a parent company which is not domiciled in France may be unable to set off tax as provided for by the agreement mean that this system must be regarded as incompatible with the principle of freedom of establishment?

Appeal brought on 15 April 2005 by L. Piau against the judgment delivered on 26 January 2005 by the Court of First Instance of the European Communities (Fourth Chamber) in Case T-193/02 between L. Piau and the Commission of the European Communities, supported by the Fédération Internationale de Football Association (FIFA)

(Case C-171/05 P)

(2005/C 155/10)

(Language of the case: French)

An appeal against the judgment delivered on 26 January 2005 by the Court of First Instance of the European Communities (Fourth Chamber) in Case T-193/02 between L. Piau and the Commission of the European Communities, supported by the Fédération Internationale de Football Association (FIFA), was brought before the Court of Justice of the European Communities on 26 January 2005 by L. Piau, represented by M. Fauconnet, avocat.

The applicant claims that the Court should:

1. set aside the judgment of the Court of First Instance in Case T-193/02;

2. annul the decision of the European Commission of 15 April 2002;

3. give final judgment in the matter itself, by application of the first paragraph of Article 61 of the Statute of the Court of Justice, since the state of the proceedings so permits;

4. order FIFA to pay the costs of Case T-193/02 and of this appeal.

Pleas in law and main arguments

1. Infringement of the applicant's rights

   The Court of First Instance, by failing of its own motion to raise the question of the breach of Article 253 EC by the Commission, which failed to give reasons for its rejection of the applicant's complaint under Article 49 EC, failed to have regard to the powers attributed to it. Furthermore, the Court of First Instance infringed Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms because it failed to take into account some of the pleas advanced by the applicant.

2. Infringement of Article 81 EC

   In the absence of factual evidence regarding the necessary regulation of the profession and evidence showing the economic or technical progress of FIFA's regulation of players' agents, the decision of the Court of First Instance is without a legal basis. The Court of First Instance erred in law in holding that there was no Community interest in pursuing the complaint, although the judgment had no legal basis and Article 81 EC had been infringed.

3. Infringement of Article 82 EC

   In the absence of enquiries by the Commission into the dominant position of FIFA and into possible abuse thereof, the Court of First Instance could not assume the role of the Commission, after having established the existence of that dominant position, and find that there was no abuse, erring in law and thus infringing Article 82 EC.

4. Contradictory and insufficient reasoning of the Court of First Instance amounting to a lack of reasoning as to the continuation of anti-competitive effects.

5. Error in law as to the equivalence of the 'FIFA diplomas'.

6. Infringement of the general principle of legal certainty.

7. Error in law as regards the task and powers of the Commission.

8. Infringement of Article 39 EC.

9. Infringement of Article 49 EC.

10. Error in law as regards the definition of Community interest.

Action brought on 18 April 2005 by the Commission of the European Communities against the Italian Republic

(Case C-173/05)

(2005/C 155/11)

(Language of the case: Italian)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 18 April 2005 by the Commission of the European Communities, represented by E. Traversa and J. Hottiaux, of its Legal Service.

The applicant claims that the Court should:

1. declare that, by enacting and maintaining in force the 'environmental protection tax' on gas pipelines laid down by Article 6 of Sicilian Regional Law No 2 of 26 March 2002 (published in GURS (Official Journal of the Sicilian Region) Part I No 14 of 2002), the Italian Republic has failed to fulfil its obligations under Articles 23 EC, 25 EC, 26 EC and 133 EC and Articles 4 and 9 of the Cooperation Agreement between the European Economic Community and the People's Democratic Republic of Algeria signed on 26 April 1976 and approved by Council Regulation (EEC) No 2210/78 of 26 September 1978 ([1]);

2. order the Italian Republic to pay the costs.

Pleas in law and main arguments

Article 6 of the Sicilian Regional Law in question infringes the principles of the Common Customs Tariff in so far as it establishes a tax having equivalent effect to an import duty (into the Community) or export duty (to other Member States) prohibited under the provisions of the Treaty and Community secondary law referred to above.

From a formal point of view and according to the wording of the contested legislation, the taxable event is the ownership of the plant whereas the taxable amount is based on the volume, in cubic metres, of the pipelines. However, the Sicilian legislature took care to specify, first, in Article 6(3), that the taxable event is the ownership of the gas pipelines '*containing the gas*'; second, Article 6(4) provides that the taxable persons are the pipeline owners '*which carry out at least one of the activities (transport, sales, purchasing)*' relating to gas. The Commission infers from this that the real objective of the Sicilian legislation is to tax the product transported (methane) and not the infrastructure (gas pipeline) as such.

According to the Court's case-law on internal taxation within the meaning of Article 90 EC, a tax charged on the method of transport according to the weight of the goods transported falls within the scope of the Community provisions on taxation of goods, since such a tax inevitably and immediately adds to the cost of the good transported, whether national or imported. It follows from the principle of interpretation set out in that case-law, which is readily applicable to taxes having equivalent effect to customs duty, that in the present case, the national tax, even if formally chargeable on the means of transport (gas pipelines) according to the volume of the good (methane) transported, in fact applies to the good itself and is inevitably and directly added to its cost.

([1]) OJ 1978 L 263 of 27.9.1978.

Reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven by judgment of that court of 19 April 2005 in the proceedings between 1. Stichting Zuid-Hollandse Milieufederatie, 2. Stichting Natuur en Milieu and College voor de Toelating van Bestrijdingsmiddelen; joined party: Bayer CropScience B.V.

(Case C-174/05)

(2005/C 155/12)

(Language of the case: Dutch)

Reference has been made to the Court of Justice of the European Communities by judgment of the College van Beroep voor het bedrijfsleven (Administrative Court for Trade and Industry) (Netherlands) of 19 April 2005, received at the Court Registry on 19 April 2005, for a preliminary ruling in the proceedings between 1. Stichting Zuid-Hollandse Milieufederatie, 2. Stichting Natuur en Milieu and College voor de Toelating van Bestrijdingsmiddelen (Board for the Authorisation of Pesticides); joined party: Bayer CropScience B.V., on the following question:

Is Article 2(3) of Decision 2003/199/EC [1] valid?

[1] Council Decision of 18 March 2003 concerning the non-inclusion of aldicarb in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing this active substance (OJ L 76 of 22 March 2003, p. 21).

Action brought on 19 April 2005 by Commission of the European Communities against Ireland

(Case C-175/05)

(2005/C 155/13)

(Language of the case: English)

An action against Ireland was brought before the Court of Justice of the European Communities on 19 April 2005 by the Commission of the European Communities, represented by Michael Shotter and Wouter Wils, acting as Agents, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that by exempting all categories of public lending establishments, within the meaning of Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property [1], Ireland has failed to fulfil its obligations under Articles 1 and 5 of that Directive;

2. order Ireland to pay the costs.

Pleas in law and main arguments

Article 1(3) of the Directive defines 'lending' in terms of making available for use, for a limited period of time and not for direct or indirect economic or commercial advantage 'when it is made through establishments which are accessible to the public'. Article 5(3) allows Member States to exempt 'certain categories of establishments' from the payment of remuneration.

The Irish authorities have relied upon Article 5(3) of the Directive and exempted by Order 'stated classes of institutions from payment of remuneration in respect of lending in practice'. The scope of this exemption is so wide that it permits all public educational and academic institutions to which the members of the public have access to engage in public lending with the result that all public lending institutions are exempt from the lending right and are also absolved from payment of remuneration.

The Commission maintains that this situation clearly goes beyond the scope of the exceptions permitted by Article 5(3) of the Directive and that Ireland therefore has failed to fulfil its obligations under Articles 1 and 5 of the Directive.

[1] OJ L 346, 27.11.1992, p. 61

Reference for a preliminary ruling from the Juzgado de lo Social Único de Algeciras by order of that court of 30 March 2005 in Maria Cristina Guerrero Pecino v Fondo de Garantía Salarial (FOGASA)

(Case C-177/05)

(2005/C 155/14)

(Language of the case: Spanish)

Reference has been made to the Court of Justice of the European Communities by order of the Juzgado de lo Social Único de Algeciras of 30 March 2005, received at the Court Registry on 20 April 2005, for a preliminary ruling in the proceedings between María Cristina Guerrero Pecino and the Fondo de Garantía Salarial.

The Juzgado de lo Social Único de Algeciras asks the Court of Justice to give a ruling on the following questions:

Having regard to the general principle of equality and non-discrimination, is the inequality in treatment created by Article 33.2 of the Workers' Statute and by the interpretation made of that provision by the Tribunal Supremo objectively justified and, consequently, must compensation for dismissal be excluded where it is payable to a worker pursuant to judicial conciliation within the ambit of Council Directive 80/987/EEC [1] of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version amended by Directive 2002/74/EC [2] of the European Parliament and of the Council of 23 September 2002,

or, on the contrary, having regard to the general principle of equality and non-discrimination, is the inequality in treatment created by Article 33.2 of the Workers' Statute and by the interpretation made of that provision by the Tribunal Supremo not objectively justified and, consequently, must compensation for dismissal be included where it is payable to a worker pursuant to judicial conciliation within the ambit of Council Directive 80/987/EEC on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer, in the version amended by Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002?

([1]) OJ L 238 of 28.10.1980, p. 23.
([2]) OJ L 270 of 8.10.2002, p. 10.

Action brought on 19 April 2005 by the Commission of the European Communities against the Hellenic Republic

(Case C-178/05)

(2005/C 155/15)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 19 April 2005 by the Commission of the European Communities, represented by Dimitrios Triantafillou, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, as a result of its legislative provisions concerning the imposition of duty on the transfer of registered offices and the transfer of effective centres of management and concerning the exemption from that duty of all cooperative agricultural organisations of whatever level, of associations and consortia thereof of any kind, of co-ownership of vessels, of shipping consortia, and of shipping companies of every kind, the Hellenic Republic has failed to fulfil its obligations under Directive 69/335/EEC; ([1])

2. order the Hellenic Republic to pay the costs.

Pleas in law and main arguments of the Commission

The Commission submits that the relevant criterion for imposition of duty on the transfer of the registered office or effective centre of management is whether or not the company is classified as a *capital company* in the State of origin, with the result that duty is not imposed when the Member State of origin does not consider a company to be a capital company. The Commission therefore objects to the fact that the Greek legislation ascribes importance only to whether or not capital duty is imposed in the State of origin, exempting from duty only the transfer to Greece of a registered office or effective centre of management from a Member State which imposes capital duty. The Commission's view is based on a both literal and systemic interpretation of the directive, which is related to the nature as capital companies of the companies liable for duty and is reinforced by the amendment brought about by Directive 85/303/EEC which moves towards abolition of capital duty.

As regards the exemption of agricultural cooperatives and shipping companies, categories covering entire branches of the economy are involved; the Greek authorities have not explained why those categories do not comprise capital companies and their total exemption is not covered by the power under the directive to exempt certain transactions. Furthermore, where the directive intended to exempt whole branches it did so expressly (for example, public undertakings and organisations).

([1]) OJ, English Special Edition 1969 (II), p. 412.

Action brought on 21 April 2005 by the Commission of the European Communities against the French Republic

(Case C-179/05)

(2005/C 155/16)

(Language of the case: French)

An action against the French Republic was brought before the Court of Justice of the European Communities on 21 April 2005 by the Commission of the European Communities, represented by M. Nolin, with an address for service in Luxembourg.

The Commission claims that the Court should:

1. declare that, by failing to provide the Commission with the information required under Article 18(1) and the first and third indents of Article 19i of Regulation No 2847/93 ([1]), the French Republic has failed to fulfil its obligations under that regulation;

2. order the French Republic to pay the costs.

Pleas in law and main arguments

— With regard to the information required under Article 18(1) of Regulation No 2847/93, the French authorities have still not provided this for 1999 or 2000. Moreover, for the subsequent years, that information has been provided late.

— With regard to the information required under Article 19i of Regulation No 2847/93, the French authorities have not provided this for 1999, 2000, 2001 or 2002. Nor has that information has been provided for subsequent years.

(1) Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ L 261, 20.10.1993, p. 1).

Action brought on 22 April 2005 by Commission of the European Communities against the Hellenic Republic

(Case C-182/05)

(2005/C 155/17)

(Language of the case: Greek)

An action against the Hellenic Republic was brought before the Court of Justice of the European Communities on 22 April 2005 by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser in the Commission's Legal Service and Bernhard Schima, a member of that service, with an address for service in Luxembourg.

The applicant claims that the Court should:

— declare that, by not ensuring publication by the Dimosia Epikhirisi Elektrismou of separate annual accounts for its activities of lignite mining and electricity production, the Hellenic Republic has failed to fulfil its obligations under Article 14 of Directive 96/92/EC (1)of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. After the Commission received a complaint on the matter and on the basis of information from Greece (various letters from the Ministry of Development and from the Energy Regulatory Authority) concerning the requirement that separate accounts should be published by the integrated company 'Dimosia Epikhirisi Elektrismou' [Public Electricity Undertaking] (DEE), in accordance with Article 14 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity (OJ 1997 L 27 p. 20), the Commission formed the view that Greece had infringed the provisions of that article.

2. The Commission considers that the publication of common accounts for DEE's activities of electricity production and lignite mining and the failure to separate those two activities constitute an infringement of the requirements of Article 14(3) of Directive 96/92/EC,

3. In the Commission's view, despite the existence of DEE's internal accounting system under which, as is required, its lignite mining activity is separated from its electricity production activity, such separation needs also to be reflected in DEE's published accounts. The Commission points out that the efforts of the Greek authorities have not so far succeeded in bringing about the requisite result. The submission of information to the Regulatory Authority as regards separate accounts does not suffice to satisfy the requirement of publication.

(1) OJ L 27 of 30.01.1997, p. 20.

Action brought on 28 April 2005 by the Commission of the European Communities against the Portuguese Republic

(Case C-191/05)

(2005/C 155/18)

(Language of the case: Portuguese)

An action against the Portuguese Republic was brought before the Court of Justice of the European Communities on 28 April 2005 by the Commission of the European Communities, represented by Michel van Beek and António Caeiros, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

1. declare that, by altering the demarcation of the Moura, Mourão e Barrancos Special Protection Area (SPA), excluding from it areas providing a habitat for species of wild birds for whose protection that SPA was designated, the Portuguese Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC [1] of 2 April 1979 on the conservation of wild birds;
2. order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

1. The Moura, Mourão e Barrancos Special Protection Area (SPA) was established by the Portuguese Government on 23 September 1999 by Decree-Law No 384-B/99 of 23 September 1999. The boundaries of that SPA are laid down in Annex XXIV to that piece of legislation.
2. It is clear from the information provided by the Portuguese authorities that the alteration of the demarcation of the Moura, Mourão e Barrancos SPA by Decree-Law No 141/2002 of 20 May 2002 has no scientific basis. However, it follows from the case-law of the Court of Justice that species whose protection was considered necessary can be excluded only on scientific grounds.

[1] OJ 1979 L 103, p. 1.

Action brought on 29 April 2005 by the Commission of the European Communities against the Grand Duchy of Luxembourg

(Case C-193/05)

(2005/C 155/19)

(Language of the case: French)

An action against the Grand Duchy of Luxembourg was brought before the Court of Justice of the European Communities on 29 April 2005 by the Commission of the European Communities, represented by D. Maidani and H. Støvlbæk, acting as Agents, with an address for service in Luxembourg.

The Commission of the European Communities claims that the Court should:

(1) declare that, by maintaining, for the purpose of establishing oneself under the home-country professional title, language knowledge requirements, a prohibition on being a person authorised to accept service and the obligation to reproduce each year the certificate from the home Member State, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, [1] in particular Articles 2, 3 and 5 thereof;

(2) order the Grand Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments:

The introduction of language testing as a prerequisite for a European lawyer to be entered in the register of the Ordre des avocats is contrary to the general objective of the Directive, which is to facilitate practice of the profession of lawyer in a Member State other than that in which the professional qualification was obtained and infringes *inter alia* Article 3(2) of that directive, under which the host Member State is to the register the lawyer 'upon presentation of a certificate attesting to his registration with the competent authority in the home Member State'.

The prohibition on being a person authorised to accept service is contrary to Article 5(1), under which a European lawyer 'carries on the same professional activities as a lawyer practising under the relevant professional title used in the host Member State'.

In its response to the reasoned opinion, the Luxembourg Government states that it has taken due note of the Commission's argument that the requirement to reproduce each year the certificate from the home Member State constitutes an unjustified administrative burden having regard to the provisions of the Directive.

The Commission has found, however, that, contrary to the terms of the Directive, for the reasons stated in the reasoned opinion, at the present time that requirement remains in the text of the Law of 13 November 2002, which implements Directive 98/5 in Luxembourg law.

[1] OJ 1998 L 77, of 14.03.1998, p. 36.

Removal from the Register of Case C-47/04 [1]

(2005/C 155/20)

(Language of the case: French)

By order of 14 February 2005, the President of the Fifth Chamber of the Court of Justice of the European Communities ordered the removal from the Register of Case C-47/04: Commission of the European Communities v French Republic.

[1] OJ C 71 of 20.03.2004.

COURT OF FIRST INSTANCE

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 April 2005

in Case T-88/01, Sniace SA v Commission of the European Communities [1]

(State aid — Action for annulment — Admissibility — Measure of individual concern to the applicant)

(2005/C 155/21)

(Language of the case: Spanish)

In Case T-88/01: Sniace SA, established in Madrid (Spain), represented by J. Baró Fuentes, M. Gómez de Liaño y Botella and F. Rodríguez Carretero, lawyers, against the Commission of the European Communities (Agents: D. Triantafyllou and J. Buendía Sierra, with an address for service in Luxembourg), supported by Republic of Austria (Agents: H. Dossi and M. Burgstaller, with an address for service in Luxembourg), by Lenzing Lyocell GmbH & Co. KG, established in Heiligenkreuz im Lafnitztal (Austria), and by Land Burgenland (Austria), represented by U. Soltész, lawyer — application for annulment of Commission Decision 2001/102/EC of 19 July 2000 on State aid granted by Austria to Lenzing Lyocell GmbH & Co. KG (OJ 2001 L 38, p. 33) — the Court of First Instance (Fifth Chamber, Extended Composition), composed of P. Lindh, President, R. García-Valdecasas, J.D. Cooke, P. Mengozzi and M.E. Martins Ribeiro, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Dismisses the action as inadmissible.*

2. *Orders the applicant to bear its own costs and to pay those incurred by the Commission.*

3. *Orders the interveners to bear their own costs.*

---

[1] OJ C 186 of 30.6.2001.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 12 April 2005

in Case T-191/02, Giorgio Lebedef v Commission of the European Communities [1]

(Officials — Framework Agreement of 1974 between the Commission and the trade union and professional organisations — Repudiation — Adoption of the operational rules — Confirmation of the Agreement of 4 April 2001 — Admissibility)

(2005/C 155/22)

(Language of the case: French)

In Case T-191/02: Giorgio Lebedef, an official of the Commission of the European Communities, residing in Senningerberg (Luxembourg), represented by G. Bounéou and F. Frabetti, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agent: J. Currall, with an address for service in Luxembourg) — application for annulment of the Commission's decision of 5 December 2001, by which it repudiated the Framework Agreement of 20 September 1974, adopted the operational rules concerning the levels, process and procedure of consultation agreed between the Commission and the majority of trade union and professional organisations on 19 January 2000, confirmed the Agreement of 4 April 2001 on the resources to be made available to the staff representatives, ratified the provisions on strikes laid down in Annex I to the Framework Agreement of 20 September 1974, requested the Vice-President of the Commission, Mr N. Kinnock, to negotiate with the trade union and professional organisations and to propose for adoption by the Commission, before the end of March 2002, a new Framework Agreement and to include in the series of amendments to the Staff Regulations, on which the trade union and staff organisations were to be consulted, an amendment providing for the opportunity to adopt electoral rules by way of a vote by the staff of the institution, and, if necessary, annulment of Mr Kinnock's letter of 22 November 2001 addressed to the President of each trade union to notify them of his decision to ask the Commission to repudiate, on 5 December 2001, the above-mentioned Framework Agreement of 20 September 1974, and to adopt several of the above-mentioned points, and annulment of Mr E. Halskov's decision of 6 December 2001

refusing to grant the applicant leave to attend, on a mission basis, the meeting of 7 December 2001 on the 'comprehensive package of proposed amendments to the Staff Regulations' — the Court of First Instance (First Chamber) composed of B. Vesterdorf, President, P. Mengozzi and M.E. Martins Ribeiro, Judges; Registrar: I. Natsinas, Administrator, has given a judgment on 12 April 2005, the operative part of which is as follows:

1. *The action is dismissed.*

2. *Each of the parties is ordered to bear their own costs, including those of the interlocutory proceedings.*

([1]) OJ C 233 of 28.9.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 April 2005

in Case T-269/02 PepsiCo, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark RUFFLES — Earlier national trade mark RIFFELS — Even earlier national trade mark RUFFLES — Coexistence and equivalence between national trade marks and Community trade marks)

(2005/C 155/23)

(Language of the case: English)

In Case T-269/02: PepsiCo, Inc., established in Purchase, New York (United States), represented by E. Armijo Chávarri, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: initially J. Novais Gonçalves and J. Crespo Carrillo, subsequently A. von Mühlendahl and J. Novais Gonçalves), the other party to the proceedings before the OHIM Board of Appeal, intervening before the Court of First Instance, being Intersnack Knabber-Gebäck GmbH & Co. KG, formerly Convent Knabber-Gebäck GmbH & Co. KG, established in Cologne (Germany), represented by M. Schaeffer, lawyer — action brought against the decision of the First Board of Appeal of OHIM of 10 June 1002 (Case R 114/2000-1) relating to opposition proceedings between PepsiCo, Inc. and Intersnack Knabber-Gebäck GmbH & Co. KG, — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 21 April 2005, in which it:

1. *Dismisses the application;*

2. *Orders the applicant to bear its own costs and to pay those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

3. *Orders the intervener to bear its own costs.*

([1]) OJ C 261 of 26.10.2002

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 April 2005

in Case T-273/02 Krüger GmbH & Co. KG v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark CALPICO — Earlier national mark CALYPSO — Article 8(1)(b) of Regulation (EC) No 40/94 — Right to be heard)

(2005/C 155/24)

(Language of the case: German)

In Case T-273/02: Krüger GmbH & Co. KG, established in Bergisch Gladbach (Germany), represented by S. von Petersdorff-Campen, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: G. Schneider), the other party to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance, being Calpis Co. Ltd, established in Tokyo (Japan), represented by O. Jüngst and M. Schork, lawyers — action brought against the decision of the First Board of Appeal of OHIM of 25 June 2002 (Case R 484/2000-1), concerning opposition proceedings between Calpis Co. Ltd and Krüger GmbH & Co. KG — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Mengozzi and I. Wiszniewska-Białecka, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 20 April 2005, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

(1) OJ C 274 of 9.11.2002.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 April 2005

in Case T-353/02 Duarte y Beltrán SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Opposition proceedings — Application for Community word mark INTEA — Earlier national word marks INTESA — Refusal of registration — Relative ground for refusal — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 155/25)

(Language of the case: Spanish)

In Case T-353/02: Duarte y Beltrán SA, established in Santander (Spain), represented initially by N. Moya Fernandez, and subsequently by J. Calderón Chavero and T. Villate Consonni, lawyers, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: M. Schneider and P. Jurado Montejano), the other party to the proceedings before the Board of Appeal of OHIM being Mirato SpA, established in Novara (Italy) — action against the decision of the Second Board of Appeal of OHIM of 6 August 2002 (Case R 407/2001-2) concerning opposition proceedings between Duarte y Beltrán SA and Mirato SpA — the Court (Second Chamber), composed of J. Pirrung, President, N. J. Forwood and I. Pelikánová, Judges; B. Pastor, Assistant Registrar, has given a judgment on 13 April 2005, in which it:

1. *Dismisses the action.*

2. *Orders the applicant to pay the costs.*

(1) JO C 44 of 22.2.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 19 April 2005

in Joined Cases T-380/02 and T-128/03: Success-Marketing Unternehmensberatungsgesellschaft mbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Application for restitutio in integrum — Conditions governing notification of decisions and communications by OHIM — Facsimile transmission)

(2005/C 155/26)

(Language of the case: German)

In Joined Cases T-380/02 and T-128/03 Success-Marketing Unternehmensberatungsgesellschaft mbH, established in Linz (Austria), represented by G. Secklehner and C. Ofner, avocats, with an address for service in Luxembourg v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agent: J. Weberndörfer and G. Schneider), the other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance in Case T-128/03, being Chipita International SA, established in Athens (Greece), represented by P. Hoffmann, avocat — actions for annulment brought, first, against the decision of the First Board of Appeal of OHIM of 26 September 2002 (Case R 26/2001-1) rejecting the application by the applicant for restitutio in integrum and, secondly, of the decision of 13 February 2003 and/or the decision of 13 March 2003 of the First Board of Appeal of OHIM (Case R 1124/2000-1) concerning opposition proceedings between Success-Marketing Unternehmensberatungsgesellschaft mbH and Chipita International SA, — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, M. E. Martins Ribeiro and K. Jürimäe, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 19 April 2005, in which it:

1. *Dismisses the actions;*

2. *Orders the applicant to pay its own costs as well as those incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM);*

3. *Orders Chipita International SA to bear its own costs.*

(1) OJ C 101 of 26.4.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 April 2005

in Case T-2/03 Verein für Konsumenteninformation v Commission of the European Communities (1)

(Access to documents — Regulation (EC) No 1049/2001 — Request relating to a very large number of documents — Total refusal of access — Obligation to carry out a concrete, individual examination — Exceptions)

(2005/C 155/27)

(Language of the case: German)

In Case T-2/03: Verein für Konsumenteninformation, established in Vienna (Austria), represented by A. Klauser, lawyer, against Commission of the European Communities (Agents: S. Rating and P. Aalto, with an address for service in Luxembourg), supported by Bank für Arbeit und Wirtschaft AG, established in Vienna, represented by H.-J. Niemeyer, lawyer, with an address for service in Luxembourg, and by Österreichische Volksbanken AG, established in Vienna, and Niederösterreichische Landesbank-Hypothekenbank AG, established in Sankt Pölten (Austria), represented by R. Roniger, A. Ablasser and W. Hemetsberger, lawyers — application for annulment of Commission Decision D (2002) 330472 of 18 December 2002 relating to a request for access to the administrative file in Case COMP/36.571/D-1, Austrian banks — 'Lombard Club' — the Court of First Instance (First Chamber, Extended Composition), composed of B. Vesterdorf, President, M. Jaeger, P. Mengozzi, M.E. Martins Ribeiro and I. Labucka, Judges; H. Jung, Registrar, gave a judgment on 13 April 2005, in which it:

1. *Annuls Decision D (2002) 330472 relating to a request for access to the administrative file in Case COMP/36.571/D-1, Austrian banks — 'Lombard Club';*

2. *Orders the Commission to pay the costs;*

3. *Orders the interveners to bear their own costs.*

(1) OJ C 55 of 8.3.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 April 2005

in Case T-28/03 Holcim (Deutschland) AG v Commission of the European Communities (1)

(Article 85 of the EC Treaty (now Article 81 EC) — Compliance with a judgment of the Court of First Instance — Reimbursement of bank guarantee charges — Non-contractual liability of the Community)

(2005/C 155/28)

(Language of the case: German)

In Case T-28/03: Holcim (Deutschland) AG, formerly Alsen AG, established in Hamburg (Germany), represented initially by F. Wiemer, and K. Moosecker, then by F. Wiemer, P. Niggemann and B. Menkhaus, lawyers, against Commission of the European Communities (Agents: R. Lyal and W. Mölls, with an address for service in Luxembourg) — Application for compensation in the form of reimbursement of the bank guarantee charges incurred by the applicant following a fine fixed by Commission Decision 94/815/EC of 30 November 1994 relating to a proceeding under Article 85 of the EC Treaty (Cases IV/33.126 and 33.322 — Cement) (OJ 1994 L 343, p. 1), which was annulled by the judgment of the Court of First Instance of 15 March 2000 in Joined Cases T-25/95, T-26/95, T-30/95 to T-32/95, T-34/95 to T-39/95, T-42/95 to T-46/95, T-48/95, T-50/95 to T-65/95, T-68/95 to T-71/95, T-87/95, T-88/95, T-103/95 and T-104/95 *Cimenteries CBR and Others* v *Commission* ('Cement') [2000] ECR II-491 — the Court of First Instance (Third Chamber), composed of J. Azizi, President, M. Jaeger and F. Dehousse, Judges; H. Jung, Registrar, gave a judgment on 21 April 2005, in which it:

1. *Dismisses the action as inadmissible in so far as it is based on Article 233 EC;*

2. *Dismisses as inadmissible the alternative request that the action, in so far as it is based on Article 233 EC, be interpreted as being an action for annulment or for failure to act;*

3. *Dismisses as inadmissible the claim for damages, as regards the bank guarantee charges incurred by the applicant before 31 January 1998;*

4. *Dismisses the remainder of the application as unfounded;*

5. *Orders the applicant to pay the costs.*

([1]) OJ C 124 of 24.5.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 April 2005

in Case T-164/03 Ampafrance SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition proceedings — Application for Community figurative trade mark comprising the word element 'monBeBé' — Earlier word marks bebe — Relative ground of refusal — Likelihood of confusion — Article 8(1)(b) and (5) of Regulation (EC) No 40/94)

(2005/C 155/29)

(Language of the case: French)

In Case T-164/03: Ampafrance SA, established in Cholet (France), represented by C. Bercial Arias, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: A. Rassat and A. Folliard-Monguiral), the other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance, being Johnson and Johnson GmbH, established in Düsseldorf (Germany), represented by D. von Schultz, lawyer — action against the decision of the First Board of Appeal of OHIM of 4 March 2003 (Case R 220/2002-1), concerning opposition proceedings between Ampafrance SA and Johnson & Johnson GmbH — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges; J. Plingers Administrator, for the Registrar, gave a judgment on 21 April 2005, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs incurred by the Office for Harmonisation in the Internal Market (Trade Marks and Designs);*

3. *Orders the intervener to bear its own costs.*

([1]) OJ C 184, 2.08.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 April 2005

in Case T-211/03 Faber Chimica Srl v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Application for figurative mark Faber — Opposition of the proprietor of the national word and figurative marks NABER — Refusal of registration)

(2005/C 155/30)

(Language of the case: Italian)

In Case T-211/03: Faber Chimica Srl, established in Fabriano (Italy), represented by P. Tartuferi and M. Andreano, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: M. Capostagno and O. Montalto), the other party to the proceedings before the Board of Appeal of OHIM being Industrias Quimicas Naber, SA Nabersa, established in Valencia (Spain) — action against the decision of the Fourth Board of Appeal of OHIM of 19 March 2003 (Case R 620/2001-4) concerning opposition proceedings between Faber Chimica Srl and Industrias Quimicas Naber, SA Nabersa — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 20 April 2005, in which it:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 March 2003 (Case R 620/2001-4) in so far as it upholds the opposition of the proprietor of the Spanish word mark NABER;*

2. *Orders the defendant to pay the costs.*

(1) OJ C 200, 23.8.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 14 April 2005

in Case T-260/03 Celltech R&D Ltd v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Word mark CELLTECH — Absolute grounds for refusal — Distinctive character — Article 7(1)(b) of Regulation (EC) No 40/94)

(2005/C 155/31)

(Language of the case: English)

In Case T-260/03: Celltech R&D Ltd, established in Slough, Berkshire (United Kingdom), represented by D. Alexander, barrister, and N. Jenkins, solicitor, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: I. de Medrano Caballero and A. Folliard-Monguiral) — action brought against the decision of the Second Board of Appeal of OHIM of 19 May 2003 (Case R 659/2002-2) concerning an application for registration as a Community trade mark of the word mark CELLTECH, — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges; C. Kristensen, Administrator, for the Registrar, gave a judgment on 14 April 2005, in which it:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 19 May 2003 (Case R 659/2002-2);*

2. *Orders the defendant to pay the costs.*

(1) OJ C 239 of 4.10.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 April 2005

in Case T-286/03 The Gillette Company v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark RIGHT GUARD XTREME sport — Earlier national figurative mark WILKINSON SWORD XTREME III — Likelihood of confusion — Refusal of registration — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 155/32)

(Language of the case: German)

In Case T-286/03: The Gillette Company, established in Boston (United States of America), represented by A. Ebert-Weidenfeller and L. Kouker, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Schneider and J. Weberndörfer), the other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance, being Wilkinson Sword GmbH, established in Solingen (Germany), represented by E. Kessler, lawyer — action against the decision of the Fourth Board of Appeal of OHIM of 17 April 2003 (Case R 221/2002-4), refusing registration of the figurative mark RIGHT GUARD XTREME sport — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges; J. Palacio González, Principal Administrator, for the Registrar, gave a judgment on 13 April 2005, in which it:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs.*

(1) OJ C 251, 18.10.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 April 2005

in Case T-318/03 Atomic Austria GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Word mark ATOMIC BLITZ — Opposition of the proprietor of national word marks ATOMIC — Evidence of renewal of registration of the earlier mark — Scope of the examination conducted by OHIM — Rejection of opposition — Article 8(1)(b) of Regulation (EC) No 40/94)

(2005/C 155/33)

(Language of the case: German)

In Case T-318/03: Atomic Austria GmbH, established in Altenmarkt (Austria), represented by G. Kucsko and C. Schumacher, lawyers, against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) (Agents: G. Schneider and B. Müller), the other party to the proceedings before the Board of Appeal having been Fabricas Agrupadas de Muñecas de Onil, SA, established in Onil (Spain) — action against the decision of the Second Board of Appeal of OHIM of 9 July 2003 (Case R 95/2003-2), relating to opposition proceedings between Atomic Austria GmbH and Fabricas Agrupadas de Muñecas de Onil, SA, — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, A.W.H. Meij and I. Pelikánová, Judges; J. Plingers, Administrator, for the Registrar, gave a judgment on 20 April 2005, in which it:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 July 2003 (Case R 95/2003-2);*

2. *Orders the Office for Harmonisation in the Internal Market (Trade Marks and Designs) to pay the costs.*

([1]) OJ C 304 of 13.12.2003.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 13 April 2005

in Case T- 353/03: Inge-Lise Nielsen v Council of the European Union ([1])

(Officials — Refusal of promotion — Article 45 of the Staff Regulations — Manifest error of assessment — Consideration of comparative merits — Admissibility)

(2005/C 155/34)

(Language of the case: French)

In Case T-353/03: Inge-Lise Nielsen, a former official of the Council of the European Union, residing in Villiers-la-Ville (Belgium), represented by S. Orlandi, A. Coolen, J.-N. Lois and É. Marchal, lawyers, with an address for service in Luxembourg, against Council of the European Union (Agents: F. Anton and M. Sims) — application for annulment of the decision of the Council not to promote the applicant to grade C 1 in the 2002 round of promotions, the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; I. Natsinas, Administrator, for the Registrar, gave a judgment on 13 April 2005, in which it:

1. *Dismisses the application;*

2. *Orders the parties to bear their own costs.*

([1]) OJ No C 7 of 10.1.2004.

JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 April 2005

in Case T-86/04, Asa Sundholm v Commission of the European Communities [1]

(Staff case — Career development review — 2001-2002 Appraisal)

(2005/C 155/35)

(Language of the case: French)

In Case T-86/04: Asa Sundholm, an official of the Commission of the European Communities, residing in Brussels (Belgium), represented by S. Orlandi, A. Coolen, J.N. Louis and E. Marchal, lawyers, with an address for service in Luxembourg, against Commission of the European Communities (Agents: C. Berardis Kayser and H. Kraemer, with an address for service in Luxembourg) — application for annulment of the applicant's career development review for the 2001-2002 Appraisal — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, N.J. Forwood and S. Papasavvas, Judges; Registrar: I. Natsinas, has given a judgment on 20 April 2005, the operative part of which is as follows:

1. *The decision of 10 April 2003 establishing a career development review for the period from 1 July 2001 to 31 December 2002 is annulled.*

2. *The Commission is ordered to pay the costs.*

[1] OJ C 94 of 17.4.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Case T-266/00 Confartigianato Venezia, Transport Lines Snc and Others v Commission of the European Communities [1]

(State aid — Commission decision declaring incompatible with the common market unlawful aid schemes and requiring repayment of incompatible aid — National procedure for repayment precluded — Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2005/C 155/36)

(Language of the case: Italian)

In Case T-266/00: Confartigianato Venezia, Transport Lines and the 15 other applicants listed in the Annex to the order, established in Venice (Italy), represented by A. Vianello, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: V. Di Bucci and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J Forwood, I. Pelikánová, S. Papasavvas, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *The action is dismissed in part as inadmissible in so far as it was brought by Transport Lines Snc, C.A.T.I.L. Consorzio Artigianato Trasportatori Interni Lagunari, C.A.T.I.L. Servizi Srl, Translion Snc, Cooperativa Trasportatori Lagunari Arl, Barich Aldo e figlio Snc, S.A.L.P.A. Trasporti Snc, Laguna Trasporti di Tosi Pietro, Puppola Trasporti e C. Snc, Simionato Roberto, Venerando Gianfranco Snc, Boscolo 'Bielo' Ivano Srl, Grassi Mario, Laguna Veneta Cooperativa Trasporti Srl, Brussa Sas and Il Fornaio di Colussi Gloria.*

2. *Transport Lines Snc, C.A.T.I.L. Consorzio Artigianato Trasportatori Interni Lagunari, C.A.T.I.L. Servizi Srl, Translion Snc, Cooperativa Trasportatori Lagunari Arl, Barich Aldo e figlio Snc, S.A.L.P.A. Trasporti Snc, Laguna Trasporti di Tosi Pietro, Puppola Trasporti e C. Snc, Simionato Roberto, Venerando Gianfranco Snc, Boscolo 'Bielo' Ivano Srl, Grassi Mario, Laguna Veneta Cooperativa Trasporti Srl, Brussa Sas and Il Fornaio di Colussi Gloria shall bear their own costs.*

3. *The Commission shall bear the costs it has incurred to date in connection with the action brought by the abovementioned sixteen undertakings.*

4. *The remainder of the costs are reserved.*

(1) OJ C 372 of 23.12.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Case T-269/00 Baglioni Hotels SpA and Sagar Srl v Commission of the European Communities (1)

(State aid — Commission decision declaring incompatible with the common market unlawful aid schemes and requiring repayment of incompatible aid — National procedure for repayment precluded — Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2005/C 155/37)

(Language of the case: Italian)

In Case T-269/00: Baglioni Hotels SpA and Sagar Srl, established in Venice (Italy), represented by A. Vianello, M. Merola and M. Pappalardo, lawyers, with an address for service in Luxembourg, supported by the Italian Republic (Agent: U. Leanza, with an address for service in Luxembourg), against Commission of the European Communities (Agent: V. Di Bucci and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová, S. Papasavvas, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *The action is dismissed in part as inadmissible in so far as it was brought by Baglioni Hotels SpA.*

2. *Baglioni Hotels SpA shall bear its own costs.*

3. *The Commission shall bear the costs it has incurred to date in connection with the action in so far as it was brought by Baglioni Hotels SpA.*

4. *The Italian Republic shall bear the costs it has incurred to date in connection with the action in so far as it was brought by Baglioni Hotels SpA.*

5. *The remainder of the costs are reserved.*

(1) OJ C 355 of 9.12.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Case T-273/00 Unione degli industriali della provincia di Venezia (Unindustria) and Others v Commission of the European Communities (1)

(State aid — Commission decision declaring incompatible with the common market unlawful aid schemes and requiring repayment of incompatible aid — National procedure for repayment precluded — Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2005/C 155/38)

(Language of the case: Italian)

In Case T-273/00: Unione degli industriali della provincia di Venezia (Unindustria), Comitato Venezia Vuole Vivere, Mingardi Srl and the other twelve applicants listed in the Annex to the order, established in Venice (Italy), represented by A. Vianello, M. Merola and A.Sodano, lawyers, with an address for service in Luxembourg, supported by the Italian Republic (Agent: U. Leanza, with an address for service in Luxembourg), against Commission of the European Communities (Agent: V. Di Bucci and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová, S. Papasavvas, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *The action is dismissed in part as inadmissible in so far as it was brought by Mingardi Srl and Marsilio Editori SpA.*

2. *Mingardi Srl and Marsilio Editori SpA shall bear their own costs.*

3. *The Commission shall bear the costs it has incurred to date in connection with the action in so far as it was brought by Mingardi Srl and Marsilio Editori SpA.*

4. *The Italian Republic shall bear the costs it has incurred in connection with the action in so far as it was brought by Mingardi Srl and Marsilio Editori SpA.*

5. *The remainder of the costs are reserved.*

([1]) OJ C 355 of 9.12.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Case T-288/00 Gardena Hotels Srl and Others v Commission of the European Communities ([1])

(State aid — Commission decision declaring incompatible with the common market unlawful aid schemes and requiring repayment of incompatible aid — National procedure for repayment precluded — Action for annulment — No legal interest in bringing proceedings — Inadmissibility)

(2005/C 155/39)

(Language of the case: Italian)

In Case T-288/00: Gardena Hotels Srl, Principessa Srl and Comitato Venezia Vuole Vivere, established in Venice (Italy), represented by A. Bianchini, lawyer, with an address for service in Luxembourg, against Commission of the European Communities (Agent: V. Di Bucci and A. Dal Ferro, lawyer, with an address for service in Luxembourg) — action for annulment of Commission Decision 2000/394/EC of 25 November 1999 on aid to firms in Venice and Chioggia by way of relief from social security contributions under Laws Nos 30/1997 and 206/1995 (OJ 2000 L 150, p. 50) — the Court of First Instance (Second Chamber, Extended Composition), composed of J. Pirrung, President, A.W.H. Meij, N.J. Forwood, I. Pelikánová, S. Papasavvas, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *The action is dismissed in part as inadmissible in so far as it was brought by Gardena Hotels Srl and the Comitato Venezia Vuole Vivere .*

2. *Gardena Hotels Srl shall bear its own costs.*

3. *The Comitato Venezia Vuole Vivere shall bear its own costs and the Commission's costs incurred to date in connection with the action in so far as it was brought by the Comitato Venezia Vuole Vivere.*

4. *The Commission shall bear the costs it has incurred to date in connection with the action in so far as it was brought by Gardena Hotels Srl.*

5. *The remainder of the costs are reserved.*

([1]) OJ C 372 of 23.12.2000.

ORDER OF THE COURT OF FIRST INSTANCE

of 10 March 2005

in Case T-184/01 IMS Health, Inc. v Commission of the European Communities ([1])

(Action for annulment — Suspension of application then withdrawal of the contested decision in the course of the proceedings — No need to give a decision)

(2005/C 155/40)

(Language of the case: English)

In Case T-184/01: IMS Health, Inc., established in Fairfield, Connecticut (United States), represented by N. Levy, J. Temple-Lang, Solicitors, and R. O'Donoghue, Barrister, against the Commission of the European Communities (Agents: initially by A. Whelan, É. Gippini Fournier and F. Siredey-Garnier, and subsequently by A. Whelan, acting as Agents, with an address for service in Luxembourg, supported by **NDC Health Corp.,** formerly National Data Corp., established in Atlanta, Georgia (United States), (represented initially by I. Forrester QC, F. Fine, Solicitor, C. Price and A. Gagliardi, lawyers, and subsequently by C. Price, J. Bourgeois, lawyers, and F. Fine, and lastly by F. Fine), and **NDC Health GmbH & Co. KG,** established in Bad Camberg (Germany), (represented initially by I. Forrester QC, F. Fine and M. Powell, Solicitors, C. Price and A. Gagliardi, lawyers, and subsequently by F. Fine, C. Price and J. Bourgeois, lawyers, and lastly by F. Fine), and by **AzyX Deutschland GmbH Geopharma Information Services,** established in

Neu-Isenburg (Germany), (represented initially by G. Vandersanden, L. Levi and D. Dugois, lawyers, and subsequently by G. Vandersanden and L. Levi) — APPLICATION for annulment of Commission Decision 2002/165/EC of 3 July 2001 relating to a proceeding pursuant to Article 82 EC (Case COMP D3/38.044 — NDC Health/IMS Health: Interim measures) (OJ 2002 L 59, p. 18), — the Court of First Instance (Fifth Chamber), composed of M. Vilaras, President, F. Dehousse and D. Šváby, Judges; H. Jung, Registrar, made an order on 10 March 2005, the operative part of which is as follows:

1. *There is no need to give a decision in the present action.*

2. *Each party shall bear its own costs, including the costs incurred in connection with the application for interim measures.*

([1]) OJ C 303 of 27.10.2001.

ORDER OF THE COURT OF FIRST INSTANCE

of 28 February 2005

in Case T-108/03 Elisabeth von Pezold v Commission of the European Communities ([1])

(EAGGF — Forestry — Decision approving a rural development programming document — Action for annulment — Natural and legal persons — Measures of individual concern to them — Lack of competence — Inadmissibility)

(2005/C 155/41)

(Language of the case: German)

In Case T-108/03: Elisabeth von Pezold, resident in Pöls (Austria), represented by R. von Pezold, lawyer, against the Commission of the European Communities (Agent: G. Braun, with an address for service in Luxembourg) — action for partial annulment of the Commission's decision of 14 July 2000 approving the rural development programming document for the Republic of Austria for the period 2000-2006 — the Court of First Instance (Third Chamber), composed of M. Jaeger, President, V. Tiili and O. Czúcz, Judges; H. Jung, Registrar, has made an order on 28 February 2005, the operative part of which is as follows:

1. *The action is dismissed.*

2. *The applicant shall pay the costs.*

([1]) OJ C 171 of 19.7.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 2 March 2005

in Case T-305/03 Opus Dent GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

(Community trade mark — Opposition — Opposition withdrawn — No need to give judgment)

(2005/C 155/42)

(Language of the case: German)

In Case T-305/03: Opus Dent GmbH, established in Freising (Germany), represented by P.J.A. Munzinger and S. Abel, lawyers, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (Agent: B. Müller), the intervener before the Court being Dornier MedTech Systems GmbH (formerly: Dornier Medizintechnik GmbH), established at Weßling (Germany), represented by J. Kroher and A. Hettenkofer, lawyers — action brought against the decision of the Second Board of Appeal of OHIM of 23 June 2003 (Case R 579/2002-2), relating to opposition proceedings between Opus Dent GmbH and Dornier MedTech Systems GmbH — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; H. Jung, Registrar, made an order on 2 March 2005, the operative part of which is as follows:

1. *There is no need to give judgment on the action.*

2. *The applicant and the intervener shall bear their own costs and shall each pay half of those incurred by the defendant.*

([1]) OJ C 275, 15.11.2003.

ORDER OF THE COURT OF FIRST INSTANCE

of 8 April 2005

in Case T-401/03: Deirdre McCabe v Commission of the European Communities ([1])

(Officials — Recruitment — Probationary period at Eurostat — Dismissal following the probationary period — Action for annulment — Claim for damages — Preliminary administrative complaint — Inadmissible)

(2005/C 155/43)

(Language of the case: French)

In Case T- T-401/03: Deirdre McCabe, a former probationer at the Commission of the European Communities, residing in Mondorf-les-Bains (Luxembourg), represented by M- Spandre and B. Zammitto, lawyers, against Commission of the European Communities (Agents: J. Currall and H. Kraemer, assisted by B. Wägenbaur, lawyer, with an address for service in Luxembourg — application, first, for annulment of the Commission decision of 25 August 2003 dismissing the applicant following her probationary period and, second, for damages, the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; H. Jung, Registrar, made an order on 8 April 2005 in which it:

1. *Dismisses the application as inadmissible;*

2. *Orders the parties to bear their own costs.*

([1]) OJ No 35 of 7.2.2004.

ORDER OF THE COURT OF FIRST INSTANCE

of 8 March 2005

in Case T-84/04 Axiom Medical, Inc. v Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) ([1])

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

(2005/C 155/44)

(Language of the case: German)

In Case T-84/04: Axiom Medical, Inc., established in Rancho Dominguez (United States of America), represented by R. Köbbing, lawyer, against Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), represented by G. Schneider, acting as Agent, the other party to the proceedings before the Board of Appeal of OHIM being Paul Hartmann Aktiengesellschaft, established in Heidenheim (Germany), — ACTION for annulment of the decision of the First Board of Appeal of OHIM of 17 December 2003 (Case R 193/2002-1) relating to opposition proceedings between Axiom Medical, Inc. and Paul Hartmann Aktiengesellschaft — the Court of First Instance (Fourth Chamber), composed of H. Legal, President, P. Lindh and V. Vadapalas, Judges; H. Jung, Registrar, made an order on 8 March 2005, the operative part of which is as follows:

1. *There is no need to adjudicate on the application;*

2. *Each party shall bear its own costs.*

([1]) OJ C 106, 30.4.2004.

Action brought on 22 February 2005 by K & L Ruppert Stiftung & Co. Handels-KG against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-86/05)

(2005/C 155/45)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 22 February 2005 by K & L Ruppert Stiftung & Co. Handels-KG, established in Weilheim (Germany), represented by D. Spohn, lawyer.

Natália Cristina Lopes de Almeida Cunha, Cláudia Couto Simões and Marly Lima Jatobá, residing at Vila Nova de Gaia (Portugal), were also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the First Board of Appeal of 7 December 2004 in Case R 328/2004-1;

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicants for Community trade mark:	Natália Cristina Lopes de Almeida Cunha, Cláudia Couto Simões and Marly Lima Jatobá
Community trade mark concerned:	Figurative mark 'CORPO livre' for goods in Classes 18 and 25 (Bags, clothing …) — Application No 1811470
Proprietor of mark or sign cited in the opposition proceedings:	The applicant
Mark or sign cited in opposition:	National and international word mark 'LIVRE' for goods in Class 25 (Clothing and shoes)
Decision of the Opposition Division:	The opposition was rejected as the evidence of use submitted was regarded as having been submitted out of time, and use of the earlier mark was therefore deemed not to have been established.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal.
Pleas in law:	Incorrect application of Rule 71, in conjunction with Rule 22, of Commission Regulation (EC) No 2868/95 of 13 December 1995 implementing Council Regulation (EC) No 40/94 on the Community trade mark [1] and Article 74(2) of Regulation (EC) No 40/94. Those provisions afford a margin of discretion in relation to consideration of evidence in inter partes proceedings too. However, the defendant did not exercise that discretion.

[1] OJ 1995 L 303, p. 1.

Action brought on 22 February 2005 by Quelle Aktiengesellschaft against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-88/05)

(2005/C 155/46)

(Language in which the application was submitted: German)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) was brought before the Court of First Instance of the European Communities on 22 February 2005 by Quelle Aktiengesellschaft, established in Fürth (Germany), represented by H. Lindner, lawyer.

Nars Cosmetics, Inc., Madrid, was also a party to the proceedings before the Board of Appeal.

The applicant claims that the Court should:

— annul the decision of the Second Board of Appeal of OHIM of 17 December 2004 in Case R 379/2004-2;

— annul the decision of the Opposition Division of 6 April 2004 (No 1138/2004) on Opposition No B288706;

— allow the opposition and reject trade mark application No 1333657;

— order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for Community trade mark:	Nars Cosmetics, Inc.
Community trade mark concerned:	Figurative mark 'NARS' for goods in Classes 3, 18 and 25 (Cleaning and bleaching preparations, leather, clothing, footwear, headgear …) — Application No 1333657.
Proprietor of mark or sign cited in the opposition proceedings:	The applicant.
Mark or sign cited in opposition:	National figurative mark 'MARS' for goods in Class 25 (Footwear, in particular sports shoes, clothing).
Decision of the Opposition Division:	Rejection of the applicant's opposition.
Decision of the Board of Appeal:	Dismissal of the applicant's appeal.
Pleas in law:	Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 due to inadequate consideration of the similarity of the marks and the identity or similarity of the goods.

Action brought on 4 April 2005 by José Antonio de Brito Sequeiro Carvalho against the Commission of the European Communities

(Case T-145/05)

(2005/C 155/47)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 April 2005 by José Antonio de Brito Sequeiro Carvalho, residing in Lisbon, represented by Karel Hartog Hagenaar, lawyer.

The applicant claims that the Court should:

1. declare the contested act non-existent and void;

2. annul or withdraw all subsequent acts referring to, confirming or seeking to extend the purported effects of that non-existent act;

3. order the payment of compensation for the detrimental consequences of that act, provisionally estimated at EUR 30 000, out of damage estimated at EUR 300 000;

4. order the defendant to pay the costs of proceedings and outlays.

Pleas in law and main arguments

The present action has been brought inter alia against the act which the Director-General acting for the Directorate-General for Development is alleged to have required the applicant to sign and to have had placed on his administrative file, whereby he decided to require the applicant to take sick leave. The applicant also objects to the maintenance of a parallel file.

In the applicant's opinion, the act in question should be regarded as legally non-existent.

In support of his claims, the applicant further alleges:

— that the reasons for the contested act are invalid;

— that the decision rejecting the complaint lodged pursuant to Article 90 of the Staff Regulations is based on facts and conduct attributed to him, of which he had no knowledge, which had never been referred to in his periodic reports and which had never been mentioned to him by his immediate superiors;

— the existence in this case of misuse of powers and abuse of process;

— breach of the principles of equality and non-discrimination.

Action brought on 4 April 2005 by Federico José Garcia Resusta against the Commission of the European Communities

(Case T-147/05)

(2005/C 155/48)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 4 April 2005 by Federico José Garcia Resusta, residing in Brussels, represented by Jean Van Rossum, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul the Commission's decision to dismiss the applicant's request for recognition of the occupational origin of his disease or aggravation thereof, which prevents him from performing the tasks associated with a post in his category and grade,

— order the defendant to pay the costs.

Pleas in law and main arguments

The Commission adopted the contested decision following the judgment of 23 November 2004 of the Court of First Instance in Case T-376/02 ([1]), which annulled the Commission's decision of 14 January 2002 awarding the applicant an invalidity pension.

In support of his action, the applicant alleges infringement of the obligation to state reasons and infringement of Article 3 of the Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease, on the grounds that the opinion of the Medical Committee, which decided that it had not been established sufficiently that the aggravation of the applicant's disease had a direct connection with the duties he had performed, was contrary to the opinion of the Invalidity Committee, which had found the applicant's pre-existing disease had been aggravated by the stress related to his duties.

([1]) Application published in OJ 2003 C 44 of 22.2.2003, p. 37, judgment published in OJ 2004 C 45 of 19.2.2005, p. 23.

Action brought on 14 April 2005 by Carlos Sanchez Ferriz against the Commission of the European Communities

(Case T-153/05)

(2005/C 155/49)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 14 April 2005 by Carlos Sanchez Ferriz, residing in Brussels, represented by Gilles Bounéou and Frédéric Frabetti, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the evaluation exercise 2003 in relation to the applicant,

2. alternatively, annul the applicant's career development report for the period 1.1.2003-31.12.2003;

3. order the Commission to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments put forward by the applicant in the present case are identical to those put forward in Cases T-43/04 and T-47/04.

Action brought on 15 April 2005 by Carmela Lo Giudice against the Commission of the European Communities

(Case T-154/05)

(2005/C 155/50)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 15 April 2005 by Carmela Lo Giudice, residing in Strambeek Bever (Belgium), represented by Gilles Bounéou and Frédéric Frabetti, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the express decision of 18 January 2005, No 05/399, rejecting her complaint;

2. in so far as is necessary, annul the implied decision rejecting the applicant's request for assistance dated 28 November 2003 and annul the implied decision rejecting the applicant's request for assistance dated 23 December 2003;

3. find that the applicant was subjected to, and experienced, psychological harassment in her job;

4. order the defendant to pay the applicant the sum of EUR 100 000 (one hundred thousand euro) in compensation for non-material damage, subject to any increases or assessments in connection with the psychological harassment, bearing in mind that the applicant's future is totally uncertain and that her health has been badly affected;

5. reserve all legal obligations, including the right to apply for discovery of the witness examinations as described in the IDOC's findings of 7 January 2005;

6. order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Commission, lodged with her superiors two requests for assistance, dated 28 November 2003 and 23 December 2003, in which she claimed to be the victim of psychological harassment within her organisational unit. By her action, she contests the rejection of her requests and of the complaint which she lodged subsequently.

In support of her action, the applicant maintains that, in the light of the number of tasks which were assigned to her by her superior and of the number of e-mails which he sent to her, it is indisputable that she experienced genuine psychological harassment. The contested decisions therefore infringe Article 12 of the Staff Regulations.

The rejection of her requests for assistance infringes, in her view, both Article 24 of the Staff Regulations and Mr Kinnock's proposal of 15 October 2003 concerning policy on psychological harassment. The applicant also alleges failure to state reasons for the decision of 18 January 2005, breach of the principle of the prohibition of arbitrary conduct, misuse of powers, breach of the principle of the protection of legitimate expectations and of the rule *patere legem quam ipse fecisti* and breach of the duty to have regard for the welfare of officials.

Action brought on 18 April 2005 by Robert Steinmetz against the Commission of the European Communities

(Case T-155/05)

(2005/C 155/51)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 April 2005 by Robert Steinmetz, residing in Luxembourg, represented by Joëlle Choucroun, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. annul the Commission's decision dated 10 January 2005 in reply to the applicant's complaints R/376/04 of 29 April 2004 and R/857/04 of 20 August 2004;

2. order the Commission to repay EUR 26.19 to the applicant;

3. award the applicant token compensation of one euro for the non-material damage suffered as a result of the contested decision;

4. order the Commission to pay the entire costs of the proceedings.

Pleas in law and main arguments

The applicant in the present case objects to the rejection by the Appointing Authority of his claim for settlement of mission expenses and for repayment of EUR 26.19 unduly deducted from his salary of March 2005. In that context, he also objects to the refusal to grant his request for assistance, submitted under Article 24 of the Staff Regulations.

It is recalled in that regard that, on 29 July 2003, the applicant participated in Brussels in the proceedings of a competition selection board of which he was chairman. He travelled in a hire vehicle placed at his disposal by the Commission. On his return to Luxembourg, he filled up with fuel and it is specifically an alleged error on the sales receipt, in respect of the time printed on that receipt, which has given rise to the present action.

In support of his claims, the applicant alleges:

— infringement of Articles 24, 62, 64 and 71 of the Staff Regulations, of Article 11 of Annex VII to the Staff Regulations and of the provisions of the 'Guide to missions' (Commission Decision of 23 March 2003) and of the 'Guide à destination des liquidateurs des missions' (Guide for officials reponsible for calculating and settling mission expenses) of March 2003;

— breach of the principle of the protection of legitimate expectations;

— the existence in this case of manifest errors of assessment.

Action brought on 18 April 2005 by Dimitra Lantzoni against the Court of Justice of the European Communities

(Case T-156/05)

(2005/C 155/52)

(Language of the case: French)

An action against the Court of Justice of the European Communities was brought before the Court of First Instance of the European Communities on 18 April 2005 by Dimitra Lantzoni, residing in Luxembourg, represented by Michèle Bouché, lawyer.

The applicant claims that the Court should:

1. annul the decision of the Complaints Committee of 8 March 2005 in so far as it rejects the applicant's two complaints of 22 September 2004 directed respectively against the distribution of promotion points to which she was subject for 2002 and against her non-promotion under the 2003 promotion procedure;

2. order the defendant to pay the costs.

Pleas in law and main arguments

In November 2003, the applicant, an official of the defendant, was informed that she had not been awarded any promotion points. She challenged that decision on the ground that her periodic report was not yet final when the promotion points were awarded. Following that challenge and the improvement of her report by the appeal assessor, the applicant's immediate superior reviewed her case in the light of her final report but again decided not to award her any promotion points for 2002. By her action, the applicant contests both the latter decision and the decision not to promote her under the 2003 procedure.

In support of her action, the applicant alleges manifest error of assessment on the basis of an alleged lack of consistency between the decision not to award her any promotion points and the assessments and findings contained in her periodic report. She also claims that the defendant compared her merits not with those of all the officials of the institution who were eligible for the same promotion, but only with those of the other officials in her unit, in contravention both of Article 45 of the Staff Regulations and of point 8 of the Annex to the Decision of the Court of Justice relating to promotions. In addition, she alleges irregularities in the opinion of the Promotion Committee, namely failure to observe the audi alteram partem rule and the rights of the defence.

As regards the challenging of the decision not to promote her, the applicant maintains that her periodic report does not in any way justify blocking her career, particularly since the criticisms made of her in her periodic reports are vague and unsubstantiated.

Action brought on 25 April 2005 by Hoechst AG against the Commission of the European Communities

(Case T-161/05)

(2005/C 155/53)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 25 April 2005 by Hoechst AG, Frankfurt am Main (Germany), represented by M. Klusmann and U. Itzen, lawyers.

The applicant claims that the Court should:

— set aside Articles 2 and 3 of the Commission's Decision of 17 February 2005, in so far as they concern the applicant;

— or, in the alternative, reduce the fine laid down in Article 2 of the contested decision as appropriate;

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

Pleas in law and main arguments

In contested Decision No C(2004) 4876 final of 19 January 2005 the Commission asserted that the applicant and other companies had infringed Article 81(1) EC (and, since 1 January 1994, Article 53(1) of the EEA Agreement as well) by allocating volume quotas and customers, agreeing price increases, setting up a compensation mechanism, exchanging information on sales volumes and prices, meeting regularly and being involved in other forms of contact, in order to agree on and implement the restrictions described. A fine was imposed on the applicant as a result of these infringements.

The applicant puts forward seven pleas in law in support of its claim. First of all, it contends that, as a result of the separation and subsequent transfer of the business in question, no fine can be imposed on it for legal reasons.

Secondly, the claimant submits that the imposition of a fine is inadmissible even if the applicant's liability for a fine is accepted, given that exemption was granted to the successor parent company of the company which made the application for exemption, but not to the applicant as its former parent company. In that respect, the applicant complains that there is no obvious legal ground for such differentiation.

The third plea concerns the calculation of the fine. According to the applicant, as a result of the 1996 Leniency Notice the fine should have been reduced by 10 % given that it expressly accepted the essential facts which form the basis of the points of the complaint.

The applicant complains further that the calculation of the basic amount was disproportionate in both absolute and relative terms and unreasonable, in the light of the Commission's usual decision-making practice.

Fifthly, the applicant objects to the option to increase fines to take account of previous procedures, to which specific reference was made, and argues, in the alternative, that the principle *non bis in idem* was infringed.

For the remainder, the applicant complains that it was given no access to the files and of the gross illegality of the hearing officers' report and finally, of the legality of the order to bring the infringement to an end.

Action brought on 27 April 2005 by Bundesverband deutscher Banken e.V. against the Commission of the European Communities

(Case T-163/05)

(2005/C 155/54)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 27 April 2005 by Bundesverband deutscher Banken e.V. (Federal Association of German Banks) Berlin, represented by H.-J. Niemeyer and K.-S. Scholz, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

— annul Commission Decision C(2004) 3931 fin. COR — Landesbank Hessen — Thüringen — Girozentrale of 20 October 2004;

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

Pleas in law and main arguments

The applicant objects to Commission Decision C(2004) 3931 fin. COR of 20 October 2004 concerning an aid measure of the Federal Republic of Germany in favour of Landesbank Hessen — Thüringen — Girozentrale (Helaba). In the contested decision the Commission asserts, inter alia, that the waiver of a 'reasonable remuneration' of 0.3 % p.a. in respect of the part of the capital transferred by Land Hessen to Helaba amounts to aid incompatible with the common market.

The applicant submits that the contested decision infringes Article 87(1) EC since:

— the Commission applied the wrong assessment period for the examination of what remuneration is to be considered as usual in the market and thus incorrectly applied the market-economy capital-investment test;

— the legal and economic classification of the capital investment was erroneous;

— the determination of the relevant capital base to be remunerated was erroneous;

— the Commission incorrectly determined 'reasonable remuneration' for the Helaba capital investment.

The applicant claims in addition that the contested decision should be annulled as it infringes the obligation to state reasons under Article 253 EC. The applicant contends that insufficient reasons were given for deducting Helaba's full refinancing costs on the ground that the capital investment was not liquid. According to the applicant, this deduction of the refinancing costs also infringes Article 87(1) EC.

Action brought on 21 April 2005 by Neophytos Neophytou against the Commission of the European Communities

(Case T-165/05)

(2005/C 155/55)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 21 April 2005 by Neophytos Neophytou, resident in Brussels (Belgium), represented by S. Pappas, lawyer.

The applicant claims that the Court should:

— cancel the contested decision;

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

Pleas in law and main arguments

The applicant contests the decision of the selection board in Competition EPSO/A/1/03 not to include his name in the reserve list for recruitment of assistant administrators for citizens of the Republic of Cyprus.

In support of its application, the applicant submits that the composition of the selection board infringed the principle of non-discrimination, that the final selection of the candidates did not comply with the requirements laid down in the notice of competition and that the selection board exceeded the limit of its discretionary powers by accepting candidates who held a degree in law for a competition in the field of public administration. The applicant also submits that the rejection of his complaint is vitiated by a lack of reasoning.

Action brought on 29 April 2005 by Borax Europe Ltd. against the Commission of the European Communities

(Case T-166/05)

(2005/C 155/56)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 April 2005 by Borax Europe Ltd., established in Guildford (United Kingdom), represented by D. Vandermeersch and K. Nordlander, lawyers.

The applicant claims that the Court should:

— annul the decision of the Commission, SG/B/2/IS/md D(2005) 1644, dated 21 February 2005;

— order the Commission to bear the costs of the procedure.

Pleas in law and main arguments

The pleas in law and main arguments invoked by the applicant are the same as those invoked in case T-121/05.

Action brought on 6 May 2005 by the Republic of Finland against the Commission of the European Communities

(Case T-177/05)

(2005/C 155/57)

(Language of the case: Finnish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 May 2005 by the Republic of Finland, represented by Tuula Pynnä, Agent, and Alice Guimaraes-Purokoski, Deputy Agent.

The applicant claims that the Court should:

1. annul the Commission's decision contained in the letter of the Director-General of the Commission's Budget Directorate-General to Finland's Permanent Representative to the European Union dated 28 February 2005 and the letter of the Director-General of the Commission's Budget Directorate-General to Finland's Permanent Representative to the European Union dated 25 April 2005 confirming that decision, by which the Commission refused to enter into negotiations with Finland on the conditional payment demanded by the Commission from Finland, in the infringement proceedings 2003/2180 brought pursuant to Article 226 EC, of retroactive customs duties and interest for late payment accrued thereon up to the date of payment;

2. order the Commission to pay the costs.

Pleas in law and main arguments

The Director-General of the Commission's Budget Directorate-General Mr Romero sent Finland's Permanent Representative to the European Union a letter dated 28 February 2005. In the letter the Commission states that it refuses to enter into negotiations on the conditional payment demanded by the Commission from Finland on the basis of Regulation (EC, Euratom) No 1150/2000, ([1]) in the infringement proceedings 2003/2180 brought pursuant to Article 226 EC, of retroactive customs duties and interest for late payment accrued thereon up to the date of payment. The Commission confirmed that decision in the letter of the Director-General of the Commission's Budget Directorate-General to Finland's Permanent Representative to the European Union dated 25 April 2005.

Finland considers that in making the contested decision the Commission infringed the EC Treaty or rules of law relating to its application within the meaning of the second paragraph of Article 230 EC

— by refusing, contrary to the principle of loyal cooperation under Article 10 EC and to the case-law of the Court of Justice concerning conditional payment, to enter into negotiations on the conditional payment demanded by the Commission from Finland on the basis of Regulation (EC, Euratom) No 1150/2000, in the infringement proceedings 2003/2180, of retroactive customs duties and interest for late payment accrued thereon up to the date of payment, and

— by not stating reasons for its refusal, contrary to Article 253 EC.

The refusal of negotiations has the result that Finland cannot pay conditionally the retroactive customs duties and interest for late payment demanded by the Commission from Finland on the basis of Regulation (EC, Euratom) No 1150/2000 in the infringement proceedings 2003/2180, at the same time ensuring that the points of law at issue in the infringement proceedings 2003/2180 are brought before the Court of Justice.

([1]) Council Rgulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources, OJ L 130 of 31.5.2000, p. 1.

Action brought on 5 May 2005 by the United Kingdom of Great Britain and Northern Ireland against the Commission of the European Communities

(Case T-178/05)

(2005/C 155/58)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 5 May 2005 by the United Kingdom of Great Britain and Northern Ireland, represented by C. Jackson, agent, assisted by M. Hoskins, Barrister.

The applicant claims that the Court should:

— join this application with the application lodged by the United Kingdom on 11 April 2005 pursuant to Article 230 EC seeking annulment of the refusal to consider the amended NAP contained in the Commissions's letter of 1 February 2005;

— annul Commission Decision C(2005) 1081 final dated 12 April 2005 concerning the proposed amendment to the national allocation plan for the allocation of greenhouse gas emission allowances notified by the United Kingdom in accordance with Directive 2003/87/EC of the European Parliament and of the Council; and

— order the Commission to pay the United Kingdom's costs of this action.

Pleas in law and main arguments

On 30 April 2004, the United Kingdom notified a provisional national allocation plan to the Commission pursuant to Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC ([1]).

On 7 July 2004, the Commission adopted Decision C(2004)2515/4 final concerning the United Kingdom's national allocation plan under Article 9(3) of the Directive.

Following the completion of the activities identified in the provisional national allocation plan, the United Kingdom notified the Commission on 10 November 2004 that it wished to amend the provisional national allocation plan to take account of the results of this work.

By the challenged decision, the Commission found that the proposed amendment to the national allocation plan notified by the United Kingdom to the Commission on 10 November 2004 and last up-dated on 18 February 2005 implying an increase of the emission allowance allocations by 19.8 Mt CO2eq was inadmissible.

The United Kingdom submits that this finding of inadmissibility is wrong as a matter of law and should be annulled.

The United Kingdom contends that the challenged decision is wrong as a matter of law on the following grounds:

— the Commission was not entitled to treat the United Kingdom's provisional national allocation plan as definitive in the decision challenged, given the express terms of the national allocation plan;

— the Commission was obliged to consider the United Kingdom's amendments to the national allocation plan as soon as possible in order to enable the United Kingdom to comply with its obligations under the Directive;

— the Commission's Decision C(2004)2515/4 final cannot prevent or restrict the consideration of the comments of the public required by point 9 of Annex III and Article 11(1) of the Directive, and a Member State must remain free to propose any amendments necessary, following public consultation;

— Article 3 of the Commission's Decision C(2004)2515/4 final permits the United Kingdom to notify any amendment to the Commission, including amendments resulting in an increase to the quantity of allowances allocated.

([1]) OJ L 275 of 25 October 2003, p. 32.

Action brought on 6 May 2005 by Stradeblu s.r.l. against the Commission of the European Communities

(Case T-179/05)

(2005/C 155/59)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 6 May 2005 by Stradeblu s.r.l. established in Cagliari, represented by Alberto M. Rossi, lawyer, for annulment of Decision 2005/163/EC of 16 March 2004 on the State aid paid by Italy to the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group), and particularly Article 1 thereof, which provides that '*without prejudice to the provisions of paragraph 2, the aid granted by Italy to Adriatica as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty*'.

The applicant claims that the Court should:

1. annul the contested decision, and particularly Article 1 thereof, in so far as it authorises the aid granted to Adriatica (as it then was, now called Tirrenia di Navigazione S.p.A) in respect of the Genoa (Voltri) to Palermo (Termini Imprese) route;

2. order repayment of the aid unlawfully received by Adriatica (and, as from 26 July 2004, by Tirrenia di Navigazione S.p.A.) in respect of the transport services rendered on the Genoa (Voltri) to Palermo (Termini Imprese) route;

3. order the Commission to pay the costs.

Pleas in law and main arguments

The present proceedings have been instituted against the decision of the Commission in respect of the State aid paid by Italy to the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group) ([1]) and particularly Article 1 thereof, which provides that '*without prejudice to the provisions of paragraph 2, the aid granted by Italy to Adriatica as of 1 January 1992 as compensation for providing a public service is compatible with the common market having regard to Article 86(2) of the Treaty*'.

In support of its claims, the applicant points to the inconsistency between the contested decision and Decision 2001/851/EC of 21 June 2001 on the aid paid by Italy to Tirrenia di Navigazione S.p.A. In that decision, the defendant took account of the obligation undertaken by the Italian authorities to eliminate the services provided by Tirrenia on the Genoa (Voltri) to Palermo (Termini Imprese) route, for a further five-year period, with the effect that that route was no longer taken into account in calculating the compensation for providing a public service. It is also stated in that decision that on the route in question the services provided by the private operator satisfy the requirements of public service laid down by the agreements entered into with the State, in terms of their capacity and frequency.

In the contested decision, by contrast, the Commission:

— adopts no measure against the Italian authorities for failing to comply with the obligation formally undertaken in the presence of the defendant to eliminate the service on the route;

— declares that the Voltri/Termini Imprese route, served by Adriatica in competition with other private undertakings, can be subsidised in that '…these operators' supply cannot be regarded as comparable to Adriatica's in terms of regularity, frequency and type of ship stipulated by the Italian authorities in the public service agreement' (paragraph 103 of the decision).

In short, the applicant alleges a failure to state reasons and/or inconsistency in the statement of reasons given for the contested decision and an infringement of Regulation No 3577/92 ([2]).

([1]) Commission Decision 2005/163/EC of 16 March 2004 on the State aid paid by Italy to the Adriatica, Caremar, Siremar, Saremar and Toremar shipping companies (Tirrenia Group) (notified under document number C(2004) 470) (OJ 2005 L 53, p. 29).

([2]) Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).

Action brought on 3 May 2005 by the Italian Republic against Commission of the European Communities

(Case T-185/05)

(2005/C 155/60)

(Language of the case: Italian)

An action was brought before the Court of First Instance of the European Communities on 3 May 2005 by the Italian Republic, represented by Maurizio Fiorilli, Avvocato dello Stato.

The applicant claims that the Court of First Instance should:

— annul the DG ADMIN decision on the use of languages (publications under Article 29(2) — EUR-25 posts) adopted at the 1678th Administrative and Budget Meeting of 10 November 2004;

— annul the competition notice for 'Directorate-General OLAF, Publication of a vacancy for a Director-General (grade A*15-16) (Article 29(2) of the Staff Regulations) (COM/2005/335)', published in the *Official Journal of the European Union* of 9 February 2005, series C. 34 A, p.3.

Pleas and principal arguments adduced in support

The present action is directed against:

— the DG ADMIN decision on the use of languages (publications under Article 29(2) — EUR-25 posts) adopted at the 1678th Administrative and Budget Meeting of 10 November 2004, in so far as it provides that vacancy notices for senior posts reserved for external candidates are to be published in the *Official Journal of the European Union* only in German, English and French;

— the competition notice for 'Directorate-General OLAF, Publication of a vacancy for a Director-General (grade A*15-16) (Article 29(2) of the Staff Regulations) (COM/2005/335)', published in the *Official Journal of the European Union* of 9 February 2005, series C. 34A, p.3. That notice was not published in Italian.

In support of its submissions, the applicant claims that:

(1) the contested measures call in question an essential principle of Community law which falls to be upheld, primarily, by the Member States. It is clear from Article 290 EC that the Community institutions are to exercise their powers in compliance with the requirement of linguistic diversity. Observance of the requirement of linguistic diversity is one of the essential aspects of the protection afforded to the national identity of the Member States, as is clear from Articles 12 and 148 EC and 6(3) EU. Article 12 EC, in particular, upholds, in accordance with Community case-law, a general principle of Community law as a specific expression of the general principle of equality. That principle ranks as a fundamental principle of Community law;

(2) the fact of limiting to only three languages the publication of competition notices for access to posts in the Commission, which until 2004 had been published in all the 'official languages' of the Community, constitutes an infringement not only of Regulation (EEC) No 1/1958 but also of the last paragraph of Article 18 of the Commission's Rules of Procedure, and of Articles 1d and 27 of the Staff Regulations of Officials, of the principle of non-discrimination on grounds of nationality and of the principle of the protection of linguistic diversity.

Removal from the Register of Case T-237/99 ([1])

(2005/C 155/61)

(Language of the case: Dutch)

By order of 11 April 2005, the President of the Second Chamber (Extended Composition) of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-237/99, Nederland V.O.F., BP Direct V.O.F. and Actomat B.V., supported by the Kingdom of the Netherlands v Commission of the European Communities.

([1]) OJ C 20 of 22.01.2000.

Removal from the Register of Case T-163/02 ([1])

(2005/C 155/62)

(Language of the case: German)

By order of 26 April 2005, the President of the Fifth Chamber of the Court of First Instance of the European Communities has ordered the removal from the Register of Case T-163/02, Montan Gesellschaft Voss mbH Stahlhandel and Others v Commission of the European Communities.

([1]) OJ C 191 of 10.8.2002.

III

(Notices)

(2005/C 155/63)

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

OJ C 143, 11.6.2005

Past publications

OJ C 132, 28.5.2005

OJ C 115, 14.5.2005

OJ C 106, 30.4.2005

OJ C 93, 16.4.2005

OJ C 82, 2.4.2005

OJ C 69, 19.3.2005

These texts are available on:
EUR-Lex:http://europa.eu.int/eur-lex
CELEX:http://europa.eu.int/celex