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Action brought on 6 February 2006 — Commission of the European Communities v Ireland

(Case C-66/06)

(2006/C 108/01)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: F. Simonetti and X. Lewis, Agents, F. Louis, avocat and C. O'Daly, Solicitor)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by not adopting, in conformity with Articles 2(1) and 4(2), (3) and (4) of the EIA Directive, all measures to ensure that, before consent is given, projects likely to have significant effects on the environment that belong to the categories of projects covered by Annex II Class 1(a), (b), (c) and (f) are made subject to a requirement for development consent and to an assessment with regard to their effects in accordance with Articles 5 to 10 of the EIA Directive, Ireland has failed to fulfil its obligations under the said Directive; and

— order Ireland to pay the costs.

Pleas in law and main arguments

The use of uniform, unqualified size thresholds

The Commission considers the Irish transposing legislation is deficient as it does not provide, in respect of project categories covered by Annex II Class 1(a), (b) and (c) of the Environmental Impact Assessment (the EIA Directive), for effective measures to achieve the results required by Articles 2(1), 4(2) and 4(3) of the EIA Directive.

Article 4(2) permits Member States to determine, by either a case-by-case examination or by 'thresholds or criteria set by the Member State', the necessity of an EIA for projects listed in Annex II. Whatever the means of determination implemented by the Member State, this means must satisfy Article 4(3), i.e., take into account the selection criteria listed in Annex III. These selection criteria include, for example, the project size, cumulation with other projects, its location, the environmental sensitivity of the geographical area and its impact on landscapes of historical, cultural or archaeological significance.

In its transposing legislation regarding projects falling under Annex II Class 1(a), (b) and (c), Ireland has, however, relied on a uniform, unqualified size threshold without any possibility of assessing any other project characteristics.

Intensive fish farming

With regard to trial fish farms, the transposing legislation would appear to allow for the possibility of an EIA 'if the Minister considers that the proposed aquaculture is likely to have significant effects on the environment.' This legislation, however, does not contain any reference to the selection criteria set out in Annex III of the EIA Directive. Thus, the Minister is under no express obligation to take account of the proposed location of such a trial fish farm or of any of the other selection criteria, for the purposes of determining if an EIA is necessary.

The Commission notes that Ireland acknowledges the need to make express provision for the Annex III selection criteria with regard to fish farm projects. However, as far as the Commission is aware, no amending legislation has been enacted or communicated to the Commission.

Action brought on 8 February 2006 — Commission of the European Communities v Hellenic Republic

(Case C-74/06)

(2006/C 108/02)

Language of the case: Greek

Parties

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

Defendant: Hellenic Republic

Form of order sought

The applicant asks the Court:

— to declare that, by applying only a single criterion, for the purpose of determining the taxable value of used cars imported into Greek territory from another Member State, as regards depreciation, based solely on the age of the vehicle — in accordance with which a reduction of 7 % is allowed for cars from six months to one year old or 14 % for cars over one year old — which does not ensure that the tax due does not exceed, even in certain cases, the amount of the residual tax which has been incorporated in the value of similar used vehicles which have already been registered in that State, while the basis for calculating depreciation is not made known to the public and examination of the cars by experts is subject to the payment of a fee of EUR 300, the Hellenic Republic has failed to fulfil its obligations under Article 90 of the EC Treaty;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The fixed scale of depreciation applied by the Hellenic Republic to imported used cars does not reflect, with the precision required by the case-law, their actual depreciation and, consequently, it does not ensure that the registration tax due does not exceed, even in certain cases, the amount of the residual tax incorporated in the value of similar used cars which have already been registered in Greece.

2. The procedure before the commission hearing objections is not sufficient to remedy the defects in that basic system, it requires a deterrent payment of a significant fee and is not accompanied by publication of the criteria to be taken into account when determining the value of used cars, rendering that procedure ineffective.

Appeal brought on 9 February 2006 by Britannia Alloys & Chemicals Ltd. against the judgment delivered on 29 November 2005 in Case T-33/02 Britannia Alloys & Chemicals Ltd v Commission of the European Communities

(Case C-76/06 P)

(2006/C 108/03)

Language of the case: English

Parties

Appellant: Britannia Alloys & Chemicals Ltd. (represented by: S. Mobley, H. Bardell and M. Commons, Solicitors)

Other party to the proceedings: Commission of the European Communities

The appellant claims that the Court should:

— set aside the judgment insofar as it dismisses the application brought by Britannia in respect of the Decision;

— annul Article 3 of the Decision insofar as it pertains to Britannia;

— in the alternative to (ii), modify Article 3 of the Decision as it pertains to Britannia, so as to annul or substantially reduce the fine imposed on Britannia therein;

— in the alternative to (ii) and (iii), refer the case back to the CFI for judgment in accordance with the judgment of the ECJ as to the law;

— in any event, order that the Commission bear its own costs and pay Britannia's costs relating to the proceedings before the CFI and the ECJ.

Pleas in law and main arguments

The applicant maintains that:

1) the CFI infringed Article 15(2) of Regulation No. 17/62/EEC ('Regulation 17') [1] by holding that the Commission lawfully applied the 10 % turnover cap under Article 15(2) to Britannia's turnover for the business year ending 30 June 1996, rather than the business year preceding the adoption of the Decision;

2) the CFI infringed the principle of equality:

   a) by upholding the Commission's discrimination between undertakings being in essentially the same situation by applying the 10 % turnover cap, in the case of Britannia, to the last year of what the Commission considers 'normal economic activity', and, in the case of all other undertakings to whom the Decision was addressed, to the business year preceding the Decision; and

   b) by upholding the Commission's Decision which discriminates against Britannia in relation to the year to which the 10 % turnover cap is applicable in comparison with its practice in other directly comparable cases;

3) the CFI infringed the principle of legal certainty:

   a) by upholding the Commission's use of a year other than the preceding business year in applying the turnover cap in Article 15(2) of Regulation 17. Certainty is required as to the absolute maximum level of penalty that might be imposed; and

   b) by interpreting Article 15(2) Regulation 17 in a way which imposes a penalty which does not correspond to the penalty laid down when the infringement was committed, thereby infringing the fundamental rights of undertakings.

[1] EEC Council: Regulation no 17: First Regulation implementing Articles 85 and 86 of the Treaty (OJ 013, 21.02.1962, p. 204-211)

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 10 February 2006 — Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport) v 1. Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, 2. Nederlandse Vereniging van Antroposofische Artsen, 3. Weleda Nederland NV and 4. Wala Nederland NV

(Case C-84/06)

(2006/C 108/04)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden (Supreme Court of the Netherlands)

Parties to the main proceedings

Applicant: Staat der Nederlanden (Ministerie van Volksgezondheid, Welzijn en Sport) (State of the Netherlands (Ministry of Public Health, Welfare and Sport))

Defendants: 1. Antroposana, Patiëntenvereniging voor Antroposofische Gezondheidszorg, 2. Nederlandse Vereniging van Antroposofische Artsen, 3. Weleda Nederland NV and 4. Wala Nederland NV

Questions referred

1. Does Directive 2001/83/EC [1] of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use oblige Member States to make anthroposophic medicinal products which are not at the same time homeopathic medicinal products subject to the requirements in respect of authorisation as set out in Title III, Chapter 1, of that directive?

2. If the answer to Question 1 is in the negative: is the Netherlands statutory provision which makes those anthroposophic medicinal products subject to the aforementioned requirements in respect of authorisation an exception to the prohibition under Article 28 EC which is authorised by virtue of Article 30 EC?

[1] OJ L 311, p. 67.

Action brought on 13 February 2006 — Commission of the European Communities v Ireland

(Case C-88/06)

(2006/C 108/05)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: J. Enegren and I. Kaufmann-Bühler, Agents)

Defendant: Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2001/45/EC of the European Parliament and of the Council of 27 June 2001 amending Council Directive 89/655/EEC concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) ([1]), or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive;

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 19 July 2004.

([1]) OJ L 195, 19/07/2001, p. 46

Appeal brought on 15 February 2006 by Bausch & Lomb Inc. against the judgment of the Court of First Instance delivered on 17 November 2005 in Case T-154/03: Biofarma SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-95/06 P)

(2006/C 108/06)

Language of the case: English

Parties

Appellant: Bausch & Lomb Inc. (represented by: M. Silverleaf QC, R. Black, B. Gerber and E. Kohner, Solicitors)

Other parties to the proceedings: 1. Biofarma SA; 2. Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Form of order sought

The appellant claims that the Court should:

— order the Contested Judgment be set aside;

— order the decision of the Third Board of Appeal of OHIM of 5 February 2003 be restored;

— order OHIM be directed to register the mark applied for in the name of the appellant;

— order the opponent pay the costs of this appeal and of the application to the CFI.

Pleas in law and main arguments

The appellant submits that the judgment of the Court of First Instance (CFI) should be set aside on the following grounds:

In the Judgment, the CFI held that there was a likelihood of confusion on the part of the public between the two marks in issue. The appellant contends that, in reaching that conclusion, the CFI erred in law and/or acted in breach of procedure. The errors relied upon are summarised below.

The CFI erred in failing to consider either properly or at all whether the goods for which the competing marks are or are sought to be registered are similar goods. In the premises the CFI erred in law.

The CFI ought to have considered whether the goods for which registration is sought are similar to those upon which use of the conflicting mark has been established. Had the CFI done so, it should have concluded that they are not and accordingly that there was no basis for the application of Article 8(1)(b). Alternatively, it should have concluded that there is at most a passing similarity in kind and that such slight similarity, when weighed in the overall balance in determining whether there is a likelihood of confusion, requires a very high degree of similarity between the conflicting marks and reasons (which were not given) why the relevant public might expect them to come from commercially related sources.

The CFI erred in law in applying Article 8(1)(b) in its consideration of the relative similarity of the competing marks. It made its assessment not on the basis of a global assessment of the overall impression that the marks make on the eye or ear of the average consumer but on the basis of a minute dissection of the linguistic and verbal characteristics of the words forming the respective marks.

In assessing similarity, the CFI should have considered the marks as a whole and by reference to the visual and, in particular, aural impact of the whole of the conflicting marks upon the eye and ear of the average consumer. Further the CFI failed to take into account the fact that the products in issue are ones in relation to which it is common ground that one can expect the relevant public to take significant care both in selection and use. Had the CFI applied the correct approach, it would have concluded that the two marks both sound and look different.

The CFI failed to identify the relevant public and accordingly erred in law. The CFI erred in law in its application of Article 8(1)(b) in determining that patients form part of the relevant public. The CFI ought to have concluded in accordance with the law that the relevant public consists of medical professionals.

In carrying out its assessment of similarity, the CFI acted in a mechanistic manner. It failed to weigh up the similarities it had found and consider whether they led to a likelihood of confusion. Instead, it assumed this was the case. Having done so, the CFI proceeded to dismiss the differences between the respective marks and goods as not removing that likelihood. This it did without explaining its reasons. Accordingly, the CFI erred in law in its application of Article 8(1)(b) as interpreted by the ECJ and/or acted in breach of procedure, in particular Article 81 of the Rules of Procedure, in failing to state the grounds for its decision.

The CFI erred in law by not considering the level of attention of the average consumer of the goods concerned, and whether this may reduce the likelihood of confusion. It should have taken account of the particularly high level of attention exhibited by the average consumer when he prepares and makes his choice between the relevant goods and the effect this may have on the likelihood of confusion. Accordingly, the CFI erred in its application of Article 8(1)(b), as interpreted by the ECJ.

Reference for a preliminary ruling from Tribunal des Affaires de Sécurité Sociale de Paris made on 22 February 2006 — Philippe Derouin v Union pour le recouvrement des cotisations de sécurité sociale et d'allocations familiales de Paris — Région Parisienne

(Case C-103/06)

(2006/C 108/07)

Language of the case: French

Referring court

Tribunal des Affaires de Sécurité Sociale de Paris

Date lodged: 22 February 2006

Parties to the main proceedings

Applicant: Philippe Derouin.

Defendant: Union pour le recouvrement des cotisations de sécurité sociale et d'allocations familiales de Paris — Région Parisienne (Urssaf).

Questions referred

Is Regulation 1408/71 of 14 June 1971 ([1]) to be interpreted as precluding a convention, such as the United Kingdom/France Taxation Convention of 22 May 1968, from providing that income received in the United Kingdom by workers resident in France and covered by social insurance in that State is excluded from the basis on which the 'contribution sociale généralisée' (CSG — general social contribution) and the 'contribution pour le remboursement de la dette sociale' (CRDS — social debt repayment contribution) levied in France are assessed?

([1]) Regulation (EEC) No 1408/71 of the Council of 14 June 1971 on the application of social security schemes to employed persons and their families moving within the Community (OJ 1971 L 149, p. 2)

Action brought on 23 February 2006 — Commission of the European Communities v Federal Republic of Germany

(Case C-109/06)

(2006/C 108/08)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: W. Mölls, Agent)

Defendant: Federal Republic of Germany

Form of order sought

— A declaration that, by not adopting the laws, regulations and administrative provisions required to implement Council Directive 2003/96/EC [1] of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, or, in any event, by not communicating these provisions to the Commission, the Federal Republic of Germany has failed to fulfil its obligations under that directive;

— An order that the Federal Republic of Germany pay the costs of the proceedings.

Pleas in law and main arguments

The period for implementing the Directive expired on 31 December 2003.

[1] OJ 2003 L 283, p.51.

Reference for a preliminary ruling from the Kammergericht Berlin made on 21 February 2006 in the land registry case of Gerda Möllendorf, Christiane Möllendorf-Niehuus; joined parties: 1. Salem -Abdul Ghani El-Rafeil, 2. Dr. Kamal Rafehi, 3 Ageel A. Al-Ageel

(Case C-117/06)

(2006/C 108/09)

Language of the case: German

Referring court

Kammergericht Berlin

Parties to the main proceedings

Applicants: Gerda Möllendorf, Christiane Möllendorf

Joined Parties: 1. Salem-Abdul Ghani El-Rafei, 2. Dr. Kamal Rafehi, 3. Ageel A. Al-Ageel

Questions referred

1. Do the provisions of Articles 2(3) and 4(1) of Council Regulation (EC) No 881/2002 of 27 May 2002 [1] prohibit property from being conveyed in performance of a sale and purchase agreement to a natural person listed in Annex I to that regulation?

2. If Question 1 is to be answered in the affirmative: does Regulation (EC) No 881/2002 prohibit entry in the land register necessary for transferring ownership in the property also when the underlying sale and purchase agreement has been concluded, and the conveyance declared binding, before publication of the limitation on disposal in the *Official Journal of the European Communities*, and the contractual purchase price to be paid by the natural person listed in Annex I to the regulation, as purchaser, has already been

   (a) deposited on the notarial trust account or

   (b) paid to the seller?

[1] OJ L 139, p. 9.

Appeal brought on 27 February 2006 by Fabbrica Italiana Accumulatori Motocarri Mentecchio SpA (FIAMM), Fabbrica Italiana Accumulatori Motocarri Montecchio Technologies Inc (FIAMM Technologies) against the judgment delivered on 14 December 2005 in Case T-69/00 Fabbrica Italiana Accumulatori Motocarri Mentecchio SpA (FIAMM), Fabbrica Italiana Accumulatori Motocarri Montecchio Technologies Inc (FIAMM Technologies) v Council of the European Union and Commission of the Euorpean Communities

(Case C-120/06P)

(2006/C 108/10)

Language of the case: Italian

Parties

Appellants: Fabbrica Italiana Accumulatori Motocarri Mentecchio SpA (FIAMM), Fabbrica Italiana Accumulatori Motocarri Montecchio Technologies Inc (FIAMM Technologies) (represented by: I. Van Bael, F. Di Gianni and A Cevese, Avvocati)

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

Form of order sought

— On the basis that the state of the proceedings so permits, give a substantive ruling confirming the appellants' entitlement to compensation arising out of the defendants' liability for an unlawful act or for a lawful act;

— in any event, order the defendants to pay the costs both of these proceedings and those before the Court of First Instance;

— in the alternative, grant the appellants fair compensation as a result of the unreasonable length of the procedure before the Court of First Instance;

— grant such further and other relief as fairness might require.

Pleas in law and main arguments

The appellants submit that the judgment under appeal is defective in that it fails totally to state grounds concerning one of the principal arguments raised, namely, that in the specific factual circumstances of the case, the appellants are entitled to rely on the decision adopted by the Appeal Board of the World Trade Organisation to establish unlawful conduct on the part of the Community for the purpose of their claim for compensation.

Appeal brought on 1 March 2006 by Giorgio Fedon & Figli SpA and Fedon America Inc. against the judgment delivered on 14 December 2005 in Case T-135/01 Girogio Fedon & Figli SpA, Fedon America Inc. v Commission of the European Communities and Council of the European Union

(Case C-121/06 P)

(2006/C 108/11)

Language of the case: Italian

Parties

Appellants:Girogio Fedon & Figli SpA, Fedon America In. (represented by: I. Van Bael, A. Cevese, F. Di Gianni and R. Antonini, Avvocati)

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

Form of order sought

— set aside the judgment of the Court of First Instance of 14 December 2005;

— on the basis that the state of the proceedings so permits, give a substantive ruling confirming the appellants' entitlement to compensation arising out of the defendants' liability for an unlawful act or for a lawful act;

— in any event, order the defendants to pay the costs both of these proceedings and those before the Court of First Instance;

— in the alternative, grant the appellants fair compensation as a result of the unreasonable length of the procedure before the Court of First Instance;

— grant such further and other relief as equity might require.

Pleas in law and main arguments

The appellants submit that the judgment under appeal is defective in that it fails totally to state any grounds concerning one of the principal arguments raised, namely, that in the specific factual circumstances of the case, the appellants are entitled to rely on the decision adopted by the Appeal Board of the World Trade Organisation to establish unlawful conduct on the part of the Community for the purposes of their claim for compensation.

Appeal brought on 1 March 2006 by Commission of the European Communities against the judgment delivered on 15 December 2005 in Case T-33/01 Infront WM AG (formerly Kirchmedia WM AG) v Commission of the EC

(Case C-125/06 P)

(2006/C 108/12)

Language of the case: English

Parties

Appellant: Commission of the European Communities (represented by: K. Banks and M. Huttunen, Agents)

Other parties to the proceedings: French Republic, United Kingdom of Great Britain and Northern Ireland, European Parliament and Council of the European Union.

The appellant claim that the Court should:

— set aside the judgment of the CFI of 15 December 2005 in case T-33/01, Infront WM AG v. Commission of the European Communities;

— give final judgment in the matter by declaring that the Applicant in Case T-33/01 was inadmissible;

— order the Applicant in Case T-33/01 to pay the costs of the Commission arising from that case and the present appeal.

Pleas in law and main arguments

This appeal concerns the issues of direct and individual concern within the meaning of Article 230, fourth paragraph, EC. The Commission considers that, in the judgment under appeal, the Court of First Instance (hereinafter 'the CFI') has erred in law in its interpretation and application of those concepts. It has thereby upset the institutional balance which is reflected in the rules governing access to the Community courts in order to challenge the validity of a Community act. The CFI has treated as directly and individually concerned by a Commission decision an enterprise which could, at the very most, be considered to have suffered indirect economic damage as a result of the decision in question, and which has not even shown the likelihood of such damage. It has accepted as constituting individual concern elements common to many other operators finding themselves in situations comparable to that of the Applicant.

Reference for a preliminary ruling from the Diikitiko Protodikio Tripoleos lodged on 3 March 2006, Carrefour — Marinopoulos v Nomarkhiaki Aftodiikisi Tripoleos

(Case C-126/06)

(2006/C 108/13)

Language of the case: Greek

Referring court

Diikitiko Protodikio Tripoleos

Date lodged: 3 March 2006

Parties to the main proceedings

Applicant: Carrefour — Marinopoulos AE

Defendant: Nomarkhiaki Aftodiikisi Tripoleos

Questions referred

(a) Does the requirement for the prior licence referred to in the grounds of the decision in order to market 'bake-off' products constitute a measure equivalent to a quantitative restriction within the meaning of Article 28 of the EC Treaty?

(b) If it were considered to be a quantitative restriction, does the requirement for a prior licence in order to make bread pursue a purely qualitative objective, that is to say establish a mere qualitative differentiation with regard to the characteristics of the bread marketed (of smell, taste, colour and the appearance of the crust) and its nutritional value (judgment of the Court of Justice in Case C 325/00 *Commission* v *Germany* [2002] ECR I-9977) or does it seek to protect consumers and public health from any deterioration in the bread's quality (Simvoulio tis Epikratias (Council of State) 3852/2002)?

(c) On the basis that the abovementioned restriction concerns both domestic and Community 'bake-off' products without distinction, is there a link with Community law and is that restriction capable of affecting, whether directly or indirectly, actually or potentially, the free trading of those products between Member States?

Action brought on 3 March 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-127/06)

(2006/C 108/14)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: A. Aresu, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC ([1]) or, in any event, by failing to communicate those provisions to the Commission, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under Article 21(1) of that Directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for implementing Directive 2002/65/EC expired on 9 October 2004.

([1]) OJ 2002 L 271, p.16

Action brought on 3 March 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-128/06)

(2006/C 108/15)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Maidani and G. Braun, Agents)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2003/124/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation ([1]) and, in any event, by failing to communicate them to the Commission, the Grand-Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for implementing Directive 2003/124/EC expired on 12 October 2004.

([1]) OJ 2003 L 339, p.70

Appeal brought on 4 March 2006 by Autosalone Ispra Snc against the judgment delivered on 30 November 2005 in Case T-250/02 Autosalone Ispra Snc v European Atomic Energy Community

(Case C-129/06 P)

(2006/C 108/16)

Language of the case: Italian

Parties

Appellant: Autosalone Ispra Snc (represented by: B. Casu, Avvocato)

Other party to the proceedings: European Atomic Energy Community, represented by the Commission of the European Communities; Agent: E. de March, assisted by A. Dal Ferro, Avvocato.

Form of order sought

— Declare that the appeal is admissible

— Set aside the judgment of the Court of First Instance of the European Communities in Case T-250/02

— Order that Case T-250/02 be referred back to the Court of First Instance so that, once appropriate measures of inquiry have been made, including those made by the court of its own motion, such as the taking of expert evidence, on the spot checks and the hearing of witnesses, the court may deliver a new judgment granting the forms of order sought by the appellant in its pleadings in the proceedings at first instance

— Order the Commission to pay all the costs of the proceedings, including those incurred at first instance

Pleas in law and main arguments

The appellant claims that the judgment of the Court of First Instance is flawed by reason of:

incorrect legal characterisation of the case as a result of misrepresentation and distortion of the evidence;

infringement of Community rules of procedure relating to the taking of evidence.

Appeal brought on 27 February 2006 by Castellblanch, SA against the judgment of the Court of First Instance delivered on 8 December 2005 in Case T-29/04: Castellblanch, SA v Office of Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Champagne Louis Roederer, SA

(Case C-131/06 P)

(2006/C 108/17)

Language of the case: English

Parties

Appellant: Castellblanch, SA (represented by: F. de Visscher, E. Cornu, E. De Gryse and D. Moreau, avocats)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM), Champagne Louis Roederer, SA

Form of order sought

The appellant claims that the Court should:

— annul the judgment of the Court of First Instance of 8 December 2005 in case T-29/04 Castellblanch, SA v Office of Harmonisation in the Internal Market (Trade Marks and Designs), insofar that it found that the Second Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs) did not infringe Article 8(1)(b) of Council Regulation (EC) No 40/94 [1] of 20 December 1993 on the Community trade mark in adopting its decision of 17 November 2003 (Case R0037/2002-2) and to give final judgment in the matter and therefore:

— to annul the decision of the Second Board of Appeal of the Office of Harmonisation in the Internal Market (Trade Marks and Designs) of 17 November 2003 (Case R0037/2000-2) insofar as it dismissed the appeal of Castellblanch SA and upheld the opposition No B 15703 for all the contested goods and rejected the trade mark application No 55962 for all the contested goods;

— order the Office of Harmonisation in the Internal Market (Trade Marks and Designs) to bear the costs both at first instance and on appeal.

Pleas in law and main arguments

The judgment of the Court of First Instance infringes the Community Law insofar as the Court of First Instance took into account two new documents that were produced for the first time before it, which the Court of First Instance should have declared inadmissible.

The Appellant does not appeal the contested judgment with regard to its first plea in law in its application for annulment before the Court of First Instance, insofar as the Court found that the proprietor of the earlier trade mark had given sufficient proof of the use of the earlier trade mark in the territory concerned. However, the Appellant criticises the fact that the Court did not take into consideration the nature of the use of the earlier trade mark when comparing the signs, and, in particular, did not take into consideration the impact of that use on the distinctive character of the earlier trade mark.

As the comparison between the goods and the likelihood of confusion, the Court of First Instance's judgment violates several provisions of Community law with respect to the Appellant's argument that proof of use of the earlier trade mark had only been given for 'Champagne' and not for all the goods for which the earlier trade mark is registered. Furthermore, where the Court of First Instance compares 'Champagne' and 'Cava', in its assessment of the likelihood of confusion, the Appellant is of the opinion that the judgment contains contradictory reasoning because the Court of First Instance judged, on the one hand, that consumers are generally particularly interested in the origin of the wines and, on the other hand, that 'Champagne' and 'Cava' are similar. As a consequence, the Court of First Instance wrongly assessed the likelihood of confusion in the present case.

In its assessment of the likelihood of confusion, the Court of First Instance wrongly failed to consider the impact of the manner in which the prior trademark has been used; nor did it correctly assess the respective weights of the evocative and non-evocative parts of the Appellant's trade mark in its assessment of the similarity between the conflicting trade marks. As a consequence, the Court of First Instance wrongly assessed te likelihood of confusion in the present case.

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[1] OJ L 011, P. 1-36

Action brought on 7 March 2006 — Commission of the European Communities v Italian Republic

(Case C-132/06)

(2006/C 108/18)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and M. Afonso, acting as Agents)

Defendant: Italian Republic

Form of order sought

— A declaration that, by providing both expressly and in a general manner in Articles 8 and 9 of Law No 289 of 27 December 2002 (Finance Law for 2003) that assessment of taxable transactions effected in the course of a series of tax years is to be abandoned, the Italian Republic has failed to fulfil its obligations under Articles 2 and 22 of the Sixth Council Directive 77/388/EEC of 17 May 1977 ([1]) in conjunction with Article 10 of the EC Treaty;

— An order that the Italian Republic should pay the costs.

Pleas in law and main arguments

The Commission points out that the Community legislature imposed a twofold obligation on Member States consisting not only in adopting all legislative measures required under national law to implement the Sixth VAT Directive but also in adopting all administrative measures necessary to ensure that taxable persons liable to VAT comply with the obligations arising under the Sixth Directive, primarily the obligation to pay the tax due as a result of effecting taxable transactions spanning a certain period of time. It would not have made any sense for the Community legislature to have provided for the harmonisation of VAT, nor would it have served any practical purpose, if national fiscal authorities were not required to implement a system of assessment and monitoring intended to ensure 'the collection of taxes in a uniform manner in all Member States', as stated in the fourteenth recital in the preamble to the Sixth Directive.

The rules introduced by Articles 8 and 9 of Italian Law No 289/2002 went far beyond the bounds of administrative discretion conferred on the Member States by the Community legislature. In fact, instead of using that discretion to achieve more effective fiscal monitoring, by the above-mentioned law, the Italian State truly abandoned in a general, indiscriminate and preventive manner all forms of VAT assessment and verification, and is thus in direct breach of the requirements under Article 22 of the Sixth Directive and, as a consequence, of the general obligation under Article 2 to subject all taxable transactions to VAT. The Italian legislature has given all taxable persons liable to VAT and subject to its fiscal competence the possibility of bypassing entirely any form of fiscal control in relation to a series of tax years. A taxable person may acquire such a significant benefit by the payment of an amount calculated according to a standard method which no longer has any connection with the amount of VAT that would have been payable in respect of the cost of supplies of goods or services effected by the taxable person in the relevant tax year.

A particularly striking example of this radical 'separation' between the tax liability that is calculated as being payable in accordance with normal VAT rules and the 'quantum' payable to qualify for the 'graveyard amnesty' is to be found in the case of a taxable person who has failed to file any tax return at all. The taxable person can regularise his position in respect of each tax year by a payment of Euro 1 500 in the case of a natural person or Euro 3 000 in the case of a company. A further example of the total absence of any link with the basis of assessment of transactions effected (but not declared) is to be found in the rules governing the 'graveyard' amnesty, which may be procured by submitting a supplementary statement. The amount payable by a taxpayer wishing to take advantage of the amnesty is calculated as a percentage (2 %) to be applied to the VAT that would have been payable in respect of the supply of goods or services effected in each tax year (or the VAT improperly deducted in respect of purchases in the same tax year).

Such a general and preventive abandonment of any means of VAT verification is likely seriously to distort the proper functioning of the common VAT system. In particular, it would undermine the principle of fiscal neutrality, which precludes the different VAT treatment of traders effecting the same transactions. Any exception to the rule that VAT should be levied and collected effectively would result, on the one hand, in inflicting serious damage to the detriment of both Italian undertakings and those in other Member States which are subject to ordinary value added tax rules and, on the other hand, in seriously undermining the principle of 'fair competition' within the Community market, set out in the fourth recital to the preamble to the Sixth Directive.

([1]) OJ L 145, p. 1

Action brought on 8 March 2006 — European Parliament v Council of the European Union

(Case C-133/06)

(2006/C 108/19)

Language of the case: French

Parties

Applicant: European Parliament (represented by: H. Duintjer Tebbens, A. Caiola and A. Auersperger Matić, Agents)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul, under Article 230 EC, Articles 29(1) and (2) and 36(3) of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ([1]);

— alternatively, annul Directive 2005/85/EC in its entirety;

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

Pleas in law and main arguments

The European Parliament raises four pleas in law in support of its application: infringement of the EC treaty, the Council's lack of competence to enact the provisions in question, breach of an essential procedural requirement and, more precisely, failure to state reasons for the contested provisions and breach of the duty to cooperate in good faith.

By reserving to itself the adoption and amendment by the consultation procedure of the minimum common list of third countries regarded as safe countries of origin and of the list of European safe third countries, the Council infringed the first indent of Article 67(5) EC providing for passage to the co-decision procedure after the legislation defining the basic principles and common rules in respect of the policy on asylum and refugees has been adopted. The Council has no power to enact, in secondary legislation, a legal basis for the adoption of successive acts of secondary legislation, in so far as they do not constitute implementing measures.

In addition, the Council has not stated reasons sufficient in law for that reservation as to legislation contained in Articles 29(1) and (2) and 36(3) of Directive 2005/85/EC, which constitutes a breach of an essential procedural requirement. Finally, the Council failed to comply with the duty, under Article 10 EC, to cooperate in good faith with the European Parliament, since the contested provisions disregard the role of co-legislator conferred by the EC Treaty on the European Parliament and despite the legislative resolution of 27 September 2005, adopted in the course of the consultation procedure concerning the directive in question, by which the Parliament drew that point to the Council's attention.

([1]) OJ 2005 L 326, p. 13.

Action brought on 8 March 2006 — Commission of the European Communities v Hellenic Republic

(Case C-134/06)

(2006/C 108/20)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and H. Støvlbæk)

Defendant: Hellenic Republic

Form of order sought

The applicant asks the Court to

— declare that, by failing to bring into force the laws, regulations and administrative provisions, as regards the profession of veterinary surgeon, that are necessary to comply with Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 amending Council Directives 89/48/EEC and 92/51/EEC on the general system for the recognition of professional qualifications and Council Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC and 93/16/EEC concerning the professions of nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, architect, pharmacist and doctor ([1]), or in any event by failing to inform the Commission thereof, the Hellenic Republic has failed to fulfil its obligations under Article 16 of that Directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

In this case Article 16(1) of Directive 2001/19/EC of the European Parliament and of the Council of 14 May 2001 provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 January 2003 and that they are to inform the Commission thereof forthwith.

The Commission considers that Greece has not yet taken the measures necessary as regards the profession of veterinary surgeon.

([1]) OJ L 206 of 31/07/2001

Appeal brought on 10 March 2006 by Roderich Weißenfels against the judgment of the Court of First Instance delivered on 25 January 2006 in Case T-33/04 Roderich Weißenfels v European Parliament

(Case C-135/06 P)

(2006/C 108/21)

Language of the case: German

Parties

Appellant: Roderich Weißenfels (represented by: G. Maximini, Rechtsanwalt)

Other party to the proceedings: European Parliament

Form of order sought

1. Annul the judgment of the Court of First Instance (First Chamber) of 25 January 2006 in Case T-33/04 (Weißenfels v European Parliament) ([1]), notified on 31 January 2006;

2. Annul the decision of the respondent of 26 June 2003, as a result of which the special aid for the severely handicapped which was awarded from another source to the appellant's son Frederik was deducted from the double child allowance granted to the appellant under Article 67(3) of the Staff Regulations;

3. Annul the implied decision of refusal of the respondent to pay back to the appellant, in accordance with his application of 4 June 2003, the double child allowance which had been unjustly retained in the past;

4. Annul the decision of the respondent of 28 April 2004, as a result of which the special aid for the severely handicapped which was granted by another source to Frederik, the son of the appellant, was declared to be an 'allowance of like nature', within the meaning of Article 67(2) of the Staff Regulations, to the double child allowance which had been granted to the appellant;

5. Order the respondent to pay the appellant compensation (in the alternative: the statutory interest which has accrued) in respect of the harm incurred as a result of the fact that parts of his income in the form of double child allowance were unjustly retained since 1 December 1998;

6. Order the respondent to pay the costs of appeal and at first instance, including the expenses incurred by the appellant.

Pleas in law and main arguments

In his appeal, the appellant contends that the Court of First Instance made procedural errors as, in its disputed judgment, it did not properly consider the claims of the appellant and unlawfully limited the scope of his application. The finding of the Court of First Instance that a claim for compensation was expressed only in the wording of the reply was erroneous, as the relevant original claim in the application is, as regards its content, to be considered as a claim for compensation.

At a formal level, the Court of First Instance did not examine the similarity of the allowances in question — as is a requirement for the application of Article 67(2) of the Staff Regulations — and did not recognise this at a material level. At a formal level, there could not be any 'allowances of like nature', as the Luxembourg special allowance is in no way linked to the status of being employed. At a material level, the difference in purpose of the two allowances should be taken into account: whereas only the appellant himself has a claim to the allowance under Article 67(3) of the Staff Regulations for the purpose of receiving it — independently of his place of residence — only the person who is entitled — thus, the son of the appellant — has a claim to the independent Luxembourg special allowance, which is for the purpose of his care, so long as he lives in Luxembourg.

Application of Article 67(2) of the Staff Regulations is therefore ruled out, as neither at a formal nor at a material level is there an allowance of like nature which is paid from a separate source, within the meaning of the Community law in this regard. The contrary view taken by the Court of First Instance therefore infringes Community law.

([1]) OJ 2006 C 74, p. 18.

Action brought on 10 March 2006 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-139/06)

(2006/C 108/22)

Language of the case: English

Parties

Applicant): Commission of the European Communities (represented by: M. Konstantinidis et D. Lawunmi, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with the following Directives of the European Parliament and of the Council, namely, 2002/96/EC [1] on Waste Electrical and Electronic Equipment and 2003/108/EC of 8 December 2003 amending Directive 2002/96/EC on waste electrical and electronic equipment [2], or in any event by failing to communicate them to the Commission, the United Kingdom has failed to fulfil its obligations under the Directive;

— order United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

The period within which te directives had to be transposed expired on 13 August 2004.

[1] OJ L 37, 13/02/2003, P. 24-39
[2] OJ L 345, 13/12/2003 P. 106-107

Action brought on 14 March 2006 — Commission of the European Communities v Czech Republic

(Case C-140/06)

(2006/C 108/23)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: K. Walker and A. Alcover San Pedro, Agents)

Defendant: Czech Republic

Form of order sought

— declare that, by not taking the legal and administrative measures necessary to comply with Directive 2002/49/EC of the European Parliament and of the Council of 25 June 2002 relating to the assessment and management of environmental noise [1], or in any event by not communicating such measures to the Commission, the Czech Republic has failed to fulfil its obligations under Article 14(1) of that directive

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The prescribed period for implementation of the directive in domestic law expired on 18 July 2004.

[1] OJ 2002 L 189, p. 12

Action brought on 20 March 2006 — Commission of the European Communities v Grand-Duchy of Luxembourg

(Case C-151/06)

(2006/C 108/24)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: D. Maidani, Agent)

Defendant: Grand-Duchy of Luxembourg

Form of order sought

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 2003/125/EC of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest [1], the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

— order the Grand-Duchy of Luxembourg to pay the costs.

Pleas in law and main arguments

The time-limit for implementing Directive 2003/125/EC expired on 12 October 2004.

[1] OJ 2003 L 339, p.73

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance (First Chamber) of 15 March 2006 — BASF AG v Commission

(Case T-15-02) [1]

(Competition — Cartels in the vitamin products sector — Rights of the defence — Guidelines on the method of setting fines — Determination of the starting amount of the fine — Deterrent effect — Aggravating circumstances — Role of leader or instigator — Cooperation during the administrative procedure — Professional secrecy and principle of sound administration)

(2006/C 108/25)

Language of the case: English

Parties

Applicant(s): BASF AG (Ludwigshafen, Germany) (represented by: N. Levy, J. Temple-Lang, Solicitor, R. O'Donoghue, Barrister and C. Federsen, Solicitor)

Defendant(s): Commission of the European Communities (represented by: R. Wainwright and L. Pignataro-Nolin, Agents)

Application for

APPLICATION for annulment or reduction of the fines imposed on the applicant by Article 3(b) of Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins) (OJ 2003 L 6, p. 1),

Operative part of the judgment

1) *Sets the amount of the fines imposed on the applicant in respect of the infringements relating to vitamins C and D3, beta-carotene and carotinoids by Article 3(b) of Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins) as follows:*

   — *infringement relating to vitamin C: EUR 10,875 million;*

   — *infringement relating to vitamin D3: EUR 5,6 million;*

   — *infringement relating to beta-carotene: EUR 16 million;*

   — *infringement relating to carotinoids: EUR 15,5 million;*

2) *Dismisses the remainder of the application;*

3) *Orders the applicant to bear four fifths of its own costs and four fifths of the costs incurred by the Commission and the Commission to bear one fifth of its own costs and to pay one fifth of the costs incurred by the applicant.*

[1] OJ C 109, 4.5.2002

Judgment of the Court of First Instance (Fourth Chamber) of 15 March 2006 — Daiichi Pharmaceutical v Commission

(Case T-26/02) [1]

(Competition — Cartels in the vitamin products sector — Guidelines on the method of setting fines — Determination of the starting amount of the fine — Attenuating circumstances — Leniency Notice)

(2006/C 108/26)

Language of the case: English

Parties

Applicant: Daiichi Pharmaceutical Co. Ltd (Tokyo, Japan) (represented by: J.Buhart and P.-M.Louis, lawyers)

Defendant: Commission of the European Communities (represented by: R.Wainwright and L.Pignataro-Nolin, agents)

Re:

APPLICATION for annulment or reduction of the fine imposed on the applicant by Article 3(f) of Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins) (OJ 2003 L 6, p. 1),

Operative part of the judgment

The Court:

1) *Reduces to EUR 18 000 000 the fine imposed on the applicant by Article 3(f) of Commission Decision 2003/2/EC of 21 November 2001 relating to a proceeding pursuant to Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/E-1/37.512 — Vitamins);*

2) *Dismisses the remainder of the application;*

3) *Orders the applicant to bear four fifths of its own costs and to pay four fifths of the costs incurred by the Commission and the Commission to bear one fifth of its own costs and to pay one fifth of the costs incurred by the applicant.*

([1]) OJ C 97, 30.4.2002

Judgment of the Court of First Instance of 16 March 2006 — Telefon & Buch v OHIM

(Case T-322/03) ([1])

(Community trade mark — Admissibility of the action — Unforeseeable circumstances — Application for a declaration of invalidity — Article 51(1)(a) of Regulation (EC) No 40/94 — Word mark WEISSE SEITEN — Absolute grounds for refusal — Article 7(1)(b) to (d) of Regulation No 40/94)

(2006/C 108/27)

Language of the case: German

Parties:

Applicant: Telefon & Buch Verlagsgesellschaft mbH (Salzburg, Austria) (represented by: H. Zeiner and M. Baldares del Barco, lawyers)

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

Other party or parties to the proceedings before the Board of Appeal of OHIM, intervener before the Court of First Instance: Herold Business Data GmbH & Co.KG (Mödling, Austria) (represented by: A. Lensing-Kramer, C. von Nussbaum and U.Reese, lawyers)

Action

brought against the decision of the First Board of Appeal of OHIM of 19 June 2003 (Joined Cases R 580/2001-1 and R 592/2001-1) relating to invalidity proceedings between Herold Business Data AG and Telefon & Buch Verlagsgesellschaft mbH,

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the applicant to pay the costs, except those incurred by the intervener;*

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

([1]) OJ 2003 C 6, of 8.1.2005

Judgment of the Court of First Instance of 15 March 2006 — Herbillon v Commission

(Case T-411/03) ([1])

(Officials — Appointment — Revision of the classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 108/28)

Language of the case: French

Parties

Applicant: Georges Herbillon (Arlon, Belgium) (represented by: N. Lhoëst and E. De Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: G. Berscheid and C. Berardis-Kayser, acting as Agents)

Re:

Application for, firstly, annulment of the Commission's decision of 20 December 2002, setting the applicant's final classification at Grade A7, step 3, and, secondly, annulment of the Commission's decision of 29 July 2003, rejecting the applicant's complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 35, 7.2.2004.

Judgment of the Court of First Instance of 15 March 2006 — Valero Jordana v Commission

(Case T-429/03) ([1])

(Officials — Appointment — Revision of the classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 108/29)

Language of the case: French

Parties

Applicant: Gregorio Valero Jordana (Uccle, Belgium) (represented by: N. Lhoëst and E. De Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and C. Berardis-Kayser, acting as Agents, assisted by D. Waelbroeck, lawyer)

Re:

Application for, primarily, annulment of the Commission's decision of 19 December 2002 setting the applicant's final classification at Grade A7, step 3, and annulment, as far as is necessary, of the Commission's decision of 9 September 2003 rejecting the applicant's complaint and, as a subsidiary plea, the production of certain documents.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 59, 6.3.2004.

Judgment of the Court of First Instance of 15 March 2006 — Leite Mateus v Commission

(Case T-10/04) ([1])

(Officials — Appointment — Revision of the classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 108/30)

Language of the case: French

Parties

Applicant: Carlos Alberto Leite Mateus (Zaventem, Belgium) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

Defendant: Commission of the European Communities (represented by: J. Currall and V. Joris, acting as Agents)

Re:

Application for annulment of the Commission's decision of 20 December 2002, setting the applicant's final classification at Grade B3 with effect from 1 March 1988.

Operative part of the judgment

The Court:

1. *Annuls the Commission's decision of 20 December 2002, setting the applicant's final classification at Grade B3 with effect from 1 March 1988;*

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

([1]) OJ C 59, 6.3.2004.

Judgment of the Court of First Instance of 15 March 2006 — Verborgh v Commission

(Case T-26/04) ([1])

(Officials — Appointment — Revision of the classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 108/31)

Language of the case: French

Parties

Applicant: Jacques Verborgh (Aalter, Belgium) (represented by: N. Lhoëst and E. De Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and S. Pilette, acting as Agents)

Re:

Application for, primarily, annulment of the Commission's decision of 20 December 2002 setting the applicant's final classification at Grade A7, step 3, and annulment, as far as is necessary, of the Commission's decision of 9 October 2003 rejecting the applicant's complaint and, as a subsidiary plea, the production of certain documents.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 71, 20.3.2004.

Judgment of the Court of First Instance of 15 March 2006 — Eurodrive v OHIM

(Case T-31/04) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark euroMASTER — Earlier national word marks EUROMASTER — No similarity between the goods or services — Partial dismissal of the opposition — Article 8(1)(b) of Regulation (EC) No 40/94)

(2006/C 108/32)

Language of the case: Spanish

Parties

Applicant: Eurodrive Services and Distribution NV (Amsterdam, the Netherlands) (represented by: E. Chávarri and A. Pérez-Gómez, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. de Medrano Caballero, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM: Jesús Gómez Frías (Madrid, Spain)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 12 November 2003 (Cases R 419/2001-1 and R 530/2001-1), relating to opposition proceedings between Jesús Gómez Frías and Eurodrive Services and Distribution NV

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 190, 24.7.2004.

Judgment of the Court of First Instance of 15 March 2006 — Athinaiki Oikogenaiki Artopoiia v OHIM

(Case T-35/04) ([1])

('Community trade mark — Opposition proceedings — Earlier word mark FERRERO — Application for Community figurative trade mark containing the verbal element "FERRÓ" — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94')

(2006/C 108/33)

Language of the case: English

Parties:

Applicant: Athinaiki Oikogenaiki Artopoiia AVEE (Pikermi, Greece) (represented by: C. Chrissanthis, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the Court of First Instance: Ferrero OHG mbH (Stadtallendorf, Germany) (represented by: M. Schaeffer, lawyer)

Action

brought against the decision of the First Board of Appeal of OHIM of 1 December 2003 (Case R 460/2002-1), relating to opposition proceedings between Athinaiki Oikogeniaki Artopoiia AVEE and Ferrero OHG mbH.

Operative part of the judgment

The Court:

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 94, of 17.4.2004.

Judgment of the Court of First Instance of 15 March 2006 — Kimman v Commission

(Case T-44/04) ([1])

(Officials — Appointment — Revision of the classification in grade — Article 31(2) of the Staff Regulations)

(2006/C 108/34)

Language of the case: French

Parties

Applicant: Eugène Kimman (Overijse, Belgium) (represented by: N. Lhoëst and E. De Schietere de Lophem, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and A. Bouquet, acting as Agents)

Re:

Application for annulment of the Commission's decision of 20 December 2002 setting the applicant's final classification at Grade B5 and, as far as is necessary, annulment of the Commission's decision of 1 October 2003 rejecting the applicant's complaint.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders each party to bear its own costs.*

([1]) OJ C 94, 17.4.2004.

Judgment of the Court of First Instance of 15 March 2006 — Develey v OHIM

(Case T-129/04) ([1])

(Community trade mark — Three-dimensional mark — Shape of a plastic bottle — Refusal of registration — Absolute ground of refusal — Lack of distinctive character — Earlier national trade mark — Paris Convention — TRIPs Agreement — Article 7(1)(b) of Regulation (EC) No 40/94)

(2006/C 108/35)

Language of the case: German

Parties:

Applicant: Develey Holding GmbH & Co. Beteiligungs KG (Unterhaching, Gemany) (represented by: R. Kunz-Hallstein and H. Kunz-Hallstein, lawyers)

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

Action

for annulment of the decision of the Second Board of Appeal of OHIM of 20 January 2004 (Case R 367/2003-2) rejecting the application for registration as a Community trade mark of a three-dimensional sign in the form of a bottle.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 168, 26.6.2004.

Judgment of the Court of First Instance of 15 March 2006 — Italian Republic v Commission

(Case T-226/04) ([1])

(Action for annulment — Regulation (EC) No 316/2004 — Common organisation of the market in wine — Protection of traditional terms — Amendment of classification of certain additional traditional indications — Use in labelling of wine originating in third countries — Procedural defect — Principle of proportionality — TRIPs Agreement)

(2006/C 108/36)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: M. Fiorilli, avvocato dello Stato)

Defendant: Commission of the European Communities (represented by: N. Nolin and V. Di Bucci, acting as Agents)

Re:

Application for partial annulment of Commission Regulation (EC) No 316/2004 of 20 February 2004 amending Regulation (EC) No 753/2002 laying down certain rules for applying Council Regulation (EC) No 1493/1999 as regards the description, designation, presentation and protection of certain wine sector products (OJ 2004 L 55, p. 16), in so far as it amends Articles 24, 36 and 37 of Commission Regulation No 753/2002 (OJ 2002 L 118, p. 1), concerning the protection of traditional terms

Operative part of the judgment

The Court:

1. *Dismisses the action.*

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

([1]) OJ C 179 of 10.7.2004

Judgment of the Court of First Instance of 8 March 2006 — Lantzoni v Court of Justice

(Case T-289/04) ([1])

(Officials — Promotion — Award of promotion points — Link to the staff report)

(2006/C 108/37)

Language of the case: French

Parties

Applicant: Dimitra Lantzoni (represented by: C. Marhuenda initially and then by M. Bouche, lawyers)

Defendant: Court of Justice of the European Communities (represented by: M. Schauss, agent)

Re:

Application for annulment of the decision of the appointing authority of the Court of Justice of the European Communities of 7 October 2003 concerning the promotion points awarded to the applicant under the 1999-2000 procedure and the 2001 procedure

Operative part of the judgment

The Court:

1. *Dismisses the application as inadmissible in so far as it relates to the award of promotion points for the 1999-2000 procedure;*

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

3. *Orders each party to bear its own costs.*

([1]) OJ C 262 of 23.10.2004.

Order of the Court of First Instance of 8 March 2006 — Service Station Veger v Commission

(Case T-238/99) ([1])

(Application initiating proceedings — Procedural requirements — Action manifestly inadmissible)

(2006/C 108/38)

Language of the case: Dutch

Parties

Applicant: Service station V/H J.P. Veger (Maria Hoop, the Netherlands) (represented by: P. Brouwers, lawyer)

Defendant: Commission of the European Communities (represented by: G. Rozet and H. Speyart initially, then G. Rozet and H. van Vliet, acting as Agents)

Re:

Application for annulment of Commission Decision 1999/705/EC of 20 July 1999 on the State aid implemented by the Netherlands for 633 Dutch service stations located near the German border (OJ 1999 L 280, p. 87)

Operative part of the order

1. *The application is dismissed.*

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

([1]) OJ C 6, 8.1.2000.

Order of the Court of First Instance of 17 February 2006 Commission v Trends and Others

(Case T-448/04) ([1])

(Arbitration clause — Plea of inadmissibility — Action against the partners of a company)

(2006/C 108/39)

Language of the case: Greek

Parties:

Applicant: Commission of the European Communities (represented by: M. Patakia, acting as Agent, assisted by M. Bra, K. Kapoutzidou and S. Chatzigiannis, lawyers)

Defendants: Transport Environment Development Systems (Trends) (Athens, Greece) (represented by: V. Christianos, lawyer), Marios Kontaratos (Athens), Anastasios Tillis (Neo Irakleio, Greece) (represented by: V. Christianos, lawyer), Georgios Argyrakos (Athens), Konstantinos Petrakis (Cholargos, Greece) and Fotini Koutroumpa (Glyfada, Greece)

Re:

Application made by the Commission for an order that the defendants reimburse the excess of the financial contribution paid by the European Community under two contracts concluded in connection with the implementation of the Community programme 'Telematics applications of common interest'.

Operative part of the Order

1. *The action is dismissed as inadmissible in so far as it is brought against Mr Tillis, Mr Kontaratos, Mr Argyrakos, Mr Petrakis and Ms Koutroumpa.*

2. *The Commission shall bear its own costs and pay those incurred by Mr Tillis relating to his plea of inadmissibility.*

([1]) OJ C 184, 2.8.2003.

Order of the Court of First Instance of 17 February 2006 — Commission v Trends and Others

(Case T-449/04) ([1])

(Arbitration clause — Plea of inadmissibility — Action against a company's shareholders)

(2006/C 108/40)

Language of the case: Greek

Parties:

Applicant: Commission of the European Communities (represented by: M. Patakia, Agent, and M. Bra, K. Kapoutzidou and S. Chatzigiannis, lawyers).

Defendants: Transport Environment Development Systems (Trends) (Athens, Greece) (represented by: V. Christianos, lawyer), Marios Kontaratos (Athens), Anastasios Tillis (Neo Irakleio, Greece) (represented by: V. Christianos, lawyer), Giorgios Argyrakos (Athens), Konstantinos Petrakis (Cholargos, Greece) and Fotini Koutroumpa (Glyfada, Greece).

Application for

An order that the defendants repay the amount of the financial contribution overpaid by the European Community in respect of two contracts concluded in implementation of the Community Programme entitled 'Telemetric systems in the area of transport'.

Operative part of the Order

1. *In so far as it is directed against Messrs Tillis, Kontaratos, Argyrakos and Petrakis and Ms Koutroumpa, the action is dismissed for inadmissibility.*

2. *The Commission shall bear its own costs and pay those incurred by Mr Tillis in respect of his plea of inadmissibility.*

([1]) OJ C 184 of 2.8.2003.

Action brought on 3 February 2005 — Commission v Environmental Management Consultants Ltd

(Case T-46/05)

(2006/C 108/41)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: D. Triantafillou, and by N. Koroyiannakis, lawyer,)

Defendant: Environmental Management Consultants Ltd (Nicosia, Cyprus)

Form of order sought

— that the defendant be ordered to pay EUR 44 056,81, corresponding to EUR 31 965,28 capital and EUR 12 091,53 as default interest, from the date on which the debit note fell due up to 31 January 2005

— that the defendant be ordered to pay interest of EUR 9,62 per day from 1 February 2005 until full satisfaction of the debt, and

— that the defendant be ordered to pay the costs.

Pleas in law and main arguments

The European Community, represented by the European Commission, concluded a contract with the defendant which fell under the provisions of the special programme with third countries and international organisations. The contract concerned in particular the carrying out of a project entitled 'Demonstration of closed-loop procedures in electroplating and metal chemistry' and should have been completed within 30 months of 1 November 1998. In the context of the contract, the Commission undertook to contribute financially to the proper carrying out of the project with an amount of 50 % of the allowable full costs and 100 % of the additional costs up to EUR 538 000.

In May 1999 the company which was coordinating the work became insolvent and suspended performance of the project which had begun on 5 February 1999. It was not possible to find another coordinator, despite the efforts of certain of the remaining members of the consortium. Subsequently the Commission decided to terminate the contract after it ascertained that it would not be possible for the remaining members of the consortium to carry out the project. The Commission notified its decision to the defendant by a letter of 16 June 2000, asking the defendant to submit a cost statement and technical report on the work carried out between February and May 1998.

The defendant submitted a cost statement for the period 1.11.1998 to 30.4.2000, but the Commission decided to proceed to assess the cost of personnel only for the period February to May 1999, which it considers constitutes the period of the actual duration of the programme, and to include the cost of equipment. On the basis of those calculations, the Commission accepted costs of EUR 23 404,72 and by this application seeks reimbursement of an amount of EUR 31 965,28, which constitutes the remainder of the advance it had paid to the defendant, together with the payment of interest owed on that amount in accordance with the relevant provisions .

Action brought on 27 February 2006 — ENERCON v OHIM

(Case T-71/06)

(2006/C 108/42)

Language of the case: German

Parties

Applicant: ENERCON GmbH (Aurich, Germany) (represented by R. Böhm, lawyer)

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

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 November 2005 (Case 0179/2005-2);

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: three-dimensional mark in the form of a section of a wind turbine for goods in Class 7 — Application No 2496743

Decision of the Examiner: Rejection of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 on the ground that the shape of the product covered by the mark is outside the usual range of forms. The three-dimensional mark is therefore distinctive.

Infringement of Article 7(3) of the Regulation inasmuch as the Board of Appeal, after considering the circumstances, should have invited the applicant to provide further opinions, if this could have led to constituting evidence for the purpose of Article 7(3).

Action brought on 28 February 2006 — Cassegrain v OHIM

(Case T -73/06)

(2006/C 108/43)

Language in which the application was lodged: French

Parties

Applicant: Jean Cassegrain (Paris, France) (represented by: Y. Coursin and T. van Innis, lawyers)

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

Form of order sought

The applicant claims that the Court should:

— Primarily, annul the decision taken and order OHIM to pay the costs;

— Alternatively, appoint an expert or a body of experts with responsibility for giving the Court guidance on whether or on what conditions the shape of a manufactured good or the representation of its outline can have as much influence on the public's memory of it as an accompanying term, as an indication of its business origin, and reserve the costs.

Pleas in law and main arguments

Community trade mark concerned: Figurative trade mark representing a bag in respect of goods in Class 18 (Application No 003598571)

Decision of the Examiner: Registration refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 4 and Article 7(1)(b) of Council Regulation No 40/94. The applicant argues that the trade mark has enough distinctive character to distinguish and characterise a bag or a range of bags from one undertaking from those from other undertakings.

Action brought on 3 March 2006 — Fox Racing/OHIM

(Case T-74/06)

(2006/C 108/44)

Language in which the application was lodged: English

Parties

Applicant: Fox Racing Inc. (Morgan Hill, USA) [represented by: P. Brownlow, Solicitor]

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

Other party to the proceedings before the Board of Appeal: Lloyd IP Limited (Penrith, United Kingdom)

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Markets (Trade Marks and Designs) ('OHIM'), of 8 December 2005 (Case R 1180/2004 — 1) in part, insofar as it rejected the application in respect of motorcycle and safety helmets and protective clothing for motorcyclists and cyclists (Class 9) and clothing, namely jackets, raincoats, sweatshirts, jerseys, shirts, pants, blouses, tights, shorts, hats, caps, sweatbands, headbands, gloves, belts, shoes, boots, socks and aprons (Class 25);

— order OHIM to pay the costs of this application.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'SHIFT' for goods in classes 9, 16, 18 and 25 — application No 2419349

Proprietor of the mark or sign cited in the opposition proceedings: Lloyd Lifestyle Limited

Mark or sign cited: The Community figurative mark and earlier non-registered work mark 'Swift' and the national figurative mark 'Swift leathers' for goods in classes 9 and 25

Decision of the Opposition Division: Refuses registration

Decision of the Board of Appeal: Annuls the contested decision insofar as it rejected the application for 'pressure air gauges' and goods in classes 16 and 18; confirms the contested decision for the remainder

Pleas in law: Violation of Article 8(1)(b) of Council Regulation (EC) No 40/94.

Action brought on 24 February 2006 — Plásticos Españoles (Aspla) v Commission

(Case T-76/06)

(2006/C 108/45)

Language of the case: Spanish

Parties

Applicant: Plásticos Españoles S.A. (Aspla) (Torrelavega, Spain) (represented by: E. Garayar and A. García Castillo, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— declare the present action for annulment admissible;

— annul Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags, alternatively substantially reduce the amount of the fine imposed on Plásticos Españoles S.A.;

— order the Commission to pay the costs.

Pleas in law and main arguments

This action seeks annulment of Decision C(2005) 4634 final, of 30 November 2005, in Case COMP/F/38.354 — Industrial bags. In the contested decision, the Commission declared that the applicant, among other undertakings, had infringed Article 81 EC by having participated, between 1991 and 2002, in agreements and concerted practices in the industrial plastic bag sector in Germany, Belgium, the Netherlands, Luxemburg, Spain and France. For those infringements, the Commission imposed a fine on the applicant jointly and severally with the undertaking Armando Álvarez S.A..

In support of its claims the applicant puts forward the following pleas:

— error in the assessment of the facts by the Commission in relation to the scale of the applicant's conduct, to the scope of the product markets and geographic markets concerned and the product quotas which serve as a basis for calculating the fines;

— violation of Article 81(1) EC and the principle of legal certainty, on account of incorrect classification of the infringement as 'single and continuous' and incorrect determination of the responsibility of the undertakings sanctioned;

— in the alternative, violation of Article 81(1) EC and the principle of legal certainty and equal treatment on account of incorrect classification of the infringement as 'single and continuous' with respect to the applicant, incorrect assessment of the applicant's individual liability and discrimination as between itself and the undertaking Stempher B.V. which, according to the Commission, had also participated in the infringement in question;

— infringement of Article 15(2) of Regulation No 17/1962 ([1]) and the Guidelines on the method of setting of fines on account of manifest error in the calculation of the fine imposed on the applicant and a manifest infringement of the principle of equal treatment and proportionality in determining the amounts.

([1]) EEC Council: Regulation No 17: First Regulation implementing Articles 85 and 86 of the Treaty (English special edition: Series I Chapter 1959-1962 p. 87)

Action brought on 3 March 2006 — Budapesti Erőmű v Commission

(Case T-80/06)

(2006/C 108/46)

Language of the case: English

Parties

Applicant: Budapesti Erőmű 'Zártkörűen Működő Részvénytársaság' (Budapest, Hungary) [represented by: M. Powell, Solicitor, C. Arhold, K. Struckmann, lawyers]

Defendant: Commission of the European Communities

Form of order sought

— Annul the Decision of the European Commission to open the formal investigation procedure in Case State aid C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs — of 9 November 2005, or in the alternative to annul the Decision as far as the power purchase agreements concluded by the applicant are concerned;

— to award the applicant the costs of the present action;

— to take such other or further action as justice may require.

Pleas in law and main arguments

The applicant is a district heating supplier and electricity generator in Hungary. In the contested decision, the Commission decided to open a formal investigation procedure into alleged new State aid in the form of power purchase agreements concluded between Hungarian electricity generators and the public Hungarian transmission operator ([1]).

In support of its application, the applicant submits that the Commission lacked competence to take the contested decision. According to the applicant, it follows from Annex 4, Chapter 3, Section 1 of the Accession Treaty ([2]) and Article 1(b) of Council Regulation No 659/1999 ([3]) that the Commission only has jurisdiction over aid measures which are still applicable after the date of accession of a new Member State. The applicant submits that the power purchase agreements were concluded prior to accession and are not still applicable after accession.

The applicant furthermore submits that the Commission committed a manifest error of law and appreciation by opening the formal investigation procedure without having objective grounds for finding that the applicant's power purchase agreements contain State aid. According to the applicant, the Commission failed to assess the nature of the applicant's power purchase agreements in the light of the circumstances at the time they were concluded, made an inadequate assessment of the notion of economic advantage and of the notion of distortion of competition and impact on trade within the meaning of Article 87(1) EC.

The applicant also submits that the Commission has erred in finding that the power purchase agreements contain new aid, as they were concluded prior to the opening of the Hungarian electricity market.

Finally, the applicant claims that the contested decision's reasoning is inadequate.

([1]) State aid — Hungary — State aid No C 41/2005 (ex NN 49/2005) — Hungarian Stranded Costs — Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (Text with EEA relevance) (OJ 2005 C 324, p. 12)

([2]) Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded - Annex IV: List referred to in Article 22 of the Act of Accession - 3. Competition policy (OJ 2003 L 236, p. 797)

([3]) Council Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article [88] of the EC Treaty (OJ L 83, p. 1)

Action brought on 14 March 2006 — Apple Computer International v Commission

(Case T-82/06)

(2006/C 108/47)

Language of the case: English

Parties

Applicant: Apple Computer International (Cork, Ireland) [represented by: G. Breen, Solicitor, P. Sreenan, SC, B. Quigley, BL]

Defendant: Commission of the European Communities

Form of order sought

— Declare that the classification contained in item 2 of the Annex to Commission Regulation (EC) No 2171/2005 in fact represents a decision, which although in the form of a regulation, is of direct and individual concern to the applicant;

— annul Commission Regulation (EC) No 2171/2005 concerning the classification of certain goods in the Combined Nomenclature (OJ L 346, p. 7) in so far as it classifies the colour monitor of the liquid crystal device type described in item 2 of the table in the annex to that regulation under CN Code 8528 21 90;

— declare that monitors meeting the technical specifications contained in item 2 of the annex to the contested Regulation are properly classified in heading 8471 of the Combined Nomenclature;

— order the Commission of the European Communities to bear the costs of the present proceedings.

Pleas in law and main arguments

The contested Regulation classifies four Liquid Crystal Displays (LCDs) at two different CN codes in the Combined Nomenclature. The applicant notes that, although the device referred to at item 2 in the annex to the contested regulation (the device) is not identified as the applicant's product, the technical characteristics and description contained therein conclusively identify the product as being the Apple 20″ LCD.

The applicant submits that by classifying its 20″ LCD at heading 8528, the Commission has infringed Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff ([1]) and committed a manifest error in the interpretation of the Community rules on tariff classification.

The applicant submits that the device satisfies, pursuant to heading 8471, as interpreted in Legal Note 5 to Chapter 84 of the Combined Nomenclature, the criteria for classification as a 'unit' of an automatic data-processing machine, is of a kind solely or principally used in an automatic data-processing machine and, moreover, is not capable of performing a specific function other than data processing. According to the applicant, the classification under heading 8528 therefore constitutes a manifest error of interpretation of the Community rules on tariff classification.

Finally, the applicant claims that the contested classification is in direct conflict with the Judgment of the European Court of Justice in Case C-11/93 *Siemens Nixdorf v Hauptzollamt Augsburg* [1994] ECR I-1945.

([1]) OJ L 256, p. 1

Action brought on 13 March 2006 — Onderlinge Waarborgmaatschappij Azivo Algemeen Ziekenfonds De Volharding v Commission

(Case T-84/06)

(2006/C 108/48)

Language of the case: Dutch

Parties

Claimant: Onderlinge Waarborgmaatschappij Azivo Algemeen Ziekenfonds De Volharding U.A. (The Hague, Netherlands) (represented by: G. van der Wal and T. Boesman, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission decision of 3 May 2005 in Cases N 541/2004 and N 542/2004;

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

Pleas in law and main arguments

The claimant is a healthcare insurance body with approximately 150 000 affiliated policyholders. Those policyholders require, as a general rule, more extensive healthcare services than the average person insured in the Netherlands. As a result, the claimant has over an extended period of time been achieving less positive results than other healthcare insurance bodies. The claimant argues that these negative results stem from shortcomings in the equalisation system.

In its action the claimant challenges the Commission decision ([1]) to authorise under Articles 87 EC and 88 EC the aid measures which the Netherlands notified in the context of the new healthcare insurance scheme. Those aid measures relate to the retention of financial reserves by healthcare insurance funds and the risk equalisation system ([2]).

According to the claimant, the Commission committed errors of appraisal in regard to the operation of the equalisation system and inadequately investigated the matter. The claimant submits that the decision is in this respect at variance with Article 86(2) EC and is incomprehensible, or at the very least inadequately reasoned.

The Commission has also, the claimant alleges, improperly approved the risk equalisation system on the basis of Article 86(2) EC. Because of the shortcomings in the equalisation system the compensation provided for a number of healthcare insurers is, it submits, higher than is necessary to cover the costs of meeting their public service obligation, whereas the position for a number of other healthcare insurers is that they are inadequately compensated by reason of those shortcomings.

The claimant submits further that, in view of the complexity of the aid scheme notified, the Commission ought to have initiated the formal investigation procedure set out in Article 88(2) EC. The Commission must at any rate have had serious difficulties during the initial investigation procedure under Article 88(3) EC in determining whether the aid scheme was compatible with the common market in view of the fact that it did not have sufficient information at its disposal.

In conclusion, the claimant contends that, in adopting the contested decision, the Commission improperly failed to take account of the fact that the new Netherlands healthcare scheme is incompatible with the non-life insurance directive ([3]) and with Articles 43 EC and 49 EC. The claimant particularly refers in this connection to the provisions of the new healthcare scheme relating to the prohibition of premium differentials, the duty of acceptance and the risk equalisation system. The claimant also takes the view that the Commission has, unlawfully and contrary to Article 253 EC, failed to provide reasons to substantiate its view that the third non-life insurance directive and Articles 43 EC and 49 EC, taken in conjunction with Articles 87 EC and 86(2) EC, do not stand in the way of the notified State aid.

([1]) OJ 2005 C 324, p. 28.

([2]) Aid measures N 541/2004 and N 542/2004.

([3]) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amendingDirectives 73/239/EEC and 88/357/EEC (third non-life insurance directive) (OJ L 228, p. 1).

Action brought on 14 March 2006 — L'Oréal/OHIM

(Case T-87/06)

(2006/C 108/49)

Language in which the application was lodged: English

Parties

Applicant: L'Oréal S.A. (Paris, France) [represented by: X. Buffet Delmas d'Autane, Lawyer]

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

Other party to the proceedings before the Board of Appeal: Revlon (Suisse) S.A. (Schlieren, Switzerland)

Form of order sought

— Annulment of the decision of the Fourth Board of Appeal of the OHIM of 9 January 2006 regarding the appeal R 216/2003-4 relating to opposition proceedings No B216087 (Community trade mark application No 1011626);

— Order for all costs incurred in relation to all proceedings in this matter (in particular, the costs of the action and the appeal) to be awarded against the OHIM.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The word mark 'FLEXI DESIGN' for goods in class 3 — application No 1011626

Proprietor of the mark or sign cited in the opposition proceedings: Revlon (Suisse) S.A.

Mark or sign cited: The national word mark 'FLEX' for goods in classes 3 and 34

Decision of the Opposition Division: Opposition upheld for all the contested goods

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Articles 15 and 43(2) of Council Regulation No 40/94 as the evidence filed by Revlon (Suisse) S.A. cannot be considered valid proof of genuine use of the word mark 'FLEX' during the relevant period, neither in the UK nor in France.

Infringement of Article 8(1)(b) of the Regulation as there is no similarity between the conflicting trade marks and consequently no risk of confusion.

Action brought on 17 March 2006 v Dorel Juvenile Group/OHIM

(Case T-88/06)

(2006/C 108/50)

Language of the case: English

Parties

Applicant: Dorel Juvenile Group, Inc. (Canton, USA) [represented by: Gesa Simon, lawyer]

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

Form of order sought

— Annul the decision of the Second Board of Appeal of 11 January 2006 (Case R 616/2004-2) and

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'SAFETY 1ST' for goods in classes 12, 20, 21 and 28 — application No 2 258 697

Decision of the examiner: Refusal of the application

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark applied for is not devoid of any distinctive character in respect of the goods applied for.

Action brought on 20 March 2006 — TOMORROW FOCUS v OHIM

(Case T-90/06)

(2006/C 108/51)

Language in which the application was lodged: German

Parties

Applicant: TOMORROW FOCUS AG (Munich, Germany) (represented by: U. Gürtler, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Information Builders (Netherlands) B.V. (Amstelveen, Netherlands)

Form of order sought

— annul the decision of the First Board of Appeal of the defendant of 17 January 2006 (Case R 116/2005-1) inasmuch as that decision rejects application No 002382455 for Community trade mark 'Tomorrow Focus';

— amend the decision of the First Board of Appeal of the defendant of 17 January 2006 (Case R 116/2005-1) in such a way that registration of application No 002382455 for Community trade mark 'Tomorrow Focus' is also granted in respect of the goods 'computers and data processing apparatus' and the services 'computer programming and design of computer programs (computer software); maintenance and upgrading of computer programs, and on-line upgrading services';

— order the defendant to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: the applicant

Community trade mark concerned: the word mark 'Tomorrow Focus' for goods and services in Classes 9, 16, 35, 38, 41 and 42 (application No 2382455)

Proprietor of the mark or sign cited in the opposition proceedings: Information Builders (Netherlands) B.V.

Mark or sign cited in opposition: the figurative mark 'Focus' for goods and services in Classes 9, 16 and 42 (Community trade mark No 68585)

Decision of the Opposition Division: grant of the opposition and rejection of the application in respect of classes 9 and 42

Decision of the Board of Appeal: annulment of the contested decision, rejection of the application for certain goods and services in Classes 9 and 42 and rejection of the remainder of the opposition

Pleas in law: infringement of Article 8(1)(b) of Regulation (EC) No 40/94 [1] on the ground that it was incorrectly held that there was a likelihood of confusion between the trade marks compared.

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[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 1994 L 11, p. 1).

Action brought on 17 March 2006 — Tsakiris-Mallas A.E. v OHIM

(Case T -96/06)

(2006/C 108/52)

Language in which the application was lodged: Greek

Parties

Applicant: Tsakiris-Mallas A.E. (Aryiroupoli, Attica, Greece) (represented by: Kharalambos Samaras, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Late Editions Limited (Leighton Buzzard, United Kingdom)

Form of order sought

— Annulment of the decision of the Second Board of Appeal of 11 January 2006 in Case R 1127/2004-2.

Pleas in law and main arguments

Applicant for a Community trade mark: Tsakiris-Mallas A.E.

Community trade mark concerned: figurative mark exë for goods in Classes 18 and 25 — Application No 2 190 015

Proprietor of the mark or sign cited in the opposition proceedings: Late Editions Limited

Mark or sign cited in opposition: National mark EXE for goods in Class 25

Decision of the Opposition Division: Opposition accepted for some of the goods

Decision of the Board of Appeal: Appeal dismissed

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation No 40/94

Order of the Court of First Instance (Third Chamber of 15 March 2006 — Aries Meca v Commission

(Case T -275/04) [1]

(2006/C 108/53)

Language of the case: French

The President of the Third Chamber has ordered that the case be removed from the register.

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[1] OJ C 262, 23.10.2004.

Order of the Court of First Instance of 10 March 2006 — Success-Marketing v OHIM

(Case T -506/04) [1]

(2006/C 108/54)

Language of the case: German

The President of the Fifth Chamber has ordered that the case be removed from the register.

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[1] OJ C 193 6.8.2005.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Decision No 1/2006 of the Tribunal

adopted at the meeting of the full Tribunal on 15 February 2006

on the assignment of cases to Chambers

(to be published in the OJ)

(2006/C 108/55)

By Decision 2005/C 322/09 of 30 November 2005 on the criteria for the assignment of cases to Chambers (OJ 2005 C 322, p. 17), the Tribunal decided to assign a number of cases to the Third Chamber, regardless of the subject-matter involved, at regular intervals to be determined at a meeting of the full Tribunal.

At the meeting of the full Tribunal on 15 February 2006, that interval was fixed at every seventh case, according to its number in the list of new actions, the list beginning with the first new case brought before the Tribunal, that is to say, Case F-118/05.

As was stated in the abovementioned decision, derogations may be made from that rule for reasons of connections between cases and to ensure a balanced and reasonably diversified workload within the Tribunal.

Luxembourg, 15 February 2006.

The Registrar	*The President*
W. HAKENBERG	P. MAHONEY

Action brought on 20 February 2006 — Semeraro v Commission

(Case F-19/06)

(2006/C 108/56)

Language of the case: French

Parties

Applicant: Maria Magdalena Semeraro ((Brussels, Belgium) (represented by: L.Vogel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the decision of the appointing authority of 8 November 2005 rejecting the applicant's complaint of 12 August 2005 against the career development report ('CDR') given to her for 2004;

— in so far as necessary, annul also that report;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant, an official of the Commission promoted to Grade C*6 on 30 November 2004, was awarded, in the context of the assessment exercise for 2004, a number of merit points that was very much lower than in previous years.

Since her complaint on that subject had been rejected, the applicant brought the present action in which she puts forward three pleas.

The first plea alleges a breach of Article 25 of the Staff Regulations and Article 9(7) of the general provisions implementing Article 43 of the Staff Regulations. The applicant claims, in particular, that the appeal assessor simply maintained the CDR as it was, without answering the objections and observations of the Joint Appraisal Committee with facts specific to the individual case.

The second plea alleges a breach of Article 43 of the Staff Regulations, of Article 1(2) of the general implementing provisions, of the principle of proportionality and of the principle of non-discrimination, and a manifest error of assessment. First, the reduction in the merit points in respect of the 2004 exercise does not accord with the fact that the analytical assessments provided have remained the same as for previous exercises. Second, the justification put forward by the administration, that the reduction is explained by the fact of the applicant's promotion at the end of 2004, is of no relevance.

The third plea alleges a breach of Article 25 of the Staff Regulations, of Article 10(3) of Annex XIII thereto, and of Article 9(7) of the general implementing provisions, and a manifest error of assessment. In particular, the appraiser, the counter-signing officer and the appeal assessor did not provide sufficient reasons when giving a negative answer to the question of the applicant's suitability to assume category B* duties.

Action brought on 22 February 2006 — Patrizia de Luca v Commission of the European Communities

(Case F-20/06)

(2006/C 108/57)

Language of the case: French

Parties

Applicant(s): Patrizia de Luca (Brussels) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers,)

Defendant(s): Commission of the European Communities

Form of order sought

The applicant claim(s) that the Court should:

— declare that Article 12 of Annex XIII to the Staff Regulations of Officials is unlawful;

— annul the decision of the appointing authority of 23 February 2005 appointing the applicant to an administrator's post in the Directorate-General 'Justice, Freedom and Security', Directorate 'Civil Justice, Rights and Citizenship', Unit 'Civil Justice', inasmuch as it fixes her classification at Grade A*9, step 2, and annul the taking effect of her seniority in step on 1 February 2005;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant, a Grade A6 official (subsequently A*10), was appointed, after Council Regulation (EC, Euratom) No 723/2004 ([1]) of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities came into force, to an administrator's post, as a candidate successful in Competition COM/A/11/01, the notice for which had been published in 2001. Pursuant to Article 12 of Annex XIII to the Staff Regulations, she was classified in Grade A*9.

First of all, the applicant claims that the contested decision amounts to downgrading, in disregard of the framework of lawfulness constituted by the notice of competition in which she was successful and also her reasonable career prospects. In addition, she alleges breach of Articles 4, 5, 29 and 31 of the Staff Regulations and also of the principles of good administration and proportionality.

According to the applicant, that decision is also contrary to the principle of equal treatment and the principle of non-discrimination. In the first place, grading of candidates successful in that competition or in competitions at the same level has been fixed at different levels depending on whether recruitment took place before or after Regulation No 723/2004 entered into force. In the second place, when the applicant's seniority in step was fixed no regard was had to the seniority that she had acquired as a Grade A*10 official, contrary to the rules applicable, especially in relation to the appointment of a member of the temporary staff as an official.

Finally, the applicant invokes the principle of the protection of legitimate expectations, inasmuch as she might expect to be appointed to the grade indicated in the notice of competition.

([1]) OJ L 124, 27 April 2004, p. 1.

Action brought on 2 March 2006 — Da Silva v Commission of the European Communities

(Case F-21/06)

(2006/C 108/58)

Language of the case: French

Parties

Applicant(s): João Da Silva (Brussels) (represented by: G. Vandersanden and L. Levi, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— a declaration that the action is admissible and well founded, including the plea of illegality that it contains;

— annulment of the applicant's classification in Grade A*14, step 2, contained in the decision of 18 May 2005 appointing the applicant as a director;

— restoration of the applicant to the grade and step in which he would in the ordinary course of events have been placed (or the equivalent according to the classification introduced by the new Staff Regulations), according to the provisions of the notice of vacancy published on 7 November 2003, pursuant to Article 29(2) of the Staff Regulations (notice for a director's post at Grade A2);

— complete reinstatement of the applicant's career with effect retrospective to the date of his being classified in the grade and step thus corrected, including the payment of default interest;

— an order that the Commission of the European Communities should pay the costs.

Pleas in law and main arguments

On 7 November 2003 the Commission published a notice of vacancy for a director's post at Grade A2, pursuant to Article 29(2) of the Staff Regulations. The applicant, a head of unit in Grade 3, step 7, occupying that post as a locum tenens, decided to apply for it.

By decision of 18 May 2005 he was appointed to the vacant post and classified in Grade A*14, step 2, the date on which that was to take effect being fixed at 16 September 2004.

In his action the applicant argues that this classification is lower than Grade 2, now A*15, which appeared in the notice of vacancy. What is more, the classification is also lower than that enjoyed by the applicant before his appointment to the director's post, while he was head of unit. That result is not consistent with the fact that a director's post entails higher duties and responsibilities.

The applicant considers that his classification is contrary to Articles 2(1) and 5 of Annex XIII to the Staff Regulations. More than one legal principle has also been infringed: the principle of non-discrimination, the principle of correspondence of grade to post, set out in Article 7(1) as an essential principle guaranteeing equal treatment of officials, the principles of legal certainty and protection of legitimate expectations, and the principles of good administration and the duty to have regard to the interests of officials. In addition, there is an infringement of the right to reasonable career prospects and of the interests of the service.

In the alternative, the applicant claims that Article 12(3) of Annex XIII to the Staff Regulations is unlawful.

Action brought on 6 March 2006 — Vienne and Others v European Parliament

(Case F-22/06)

(2006/C 108/59)

Language of the case: French

Parties

Applicants: Philippe Vienne (Bascharage, Luxembourg) and Others (represented by: G. Bounéou and F. Frabetti, lawyers)

Defendant: European Parliament

Form of order sought

— annul the annul the explicit decision of 14 November 2005 whereby the European Parliament refused to afford the applicants assistance under Article 24 of the Staff Regulations;

— order the European Parliament to make good all the loss thereby sustained by the applicants;

— order the European Parliament to pay the costs;

Pleas in law and main arguments

The applicants, who are all officials or other servants of the European Parliament, had sought to have their pension rights acquired in Belgium transferred to the Community system, in accordance with the provisions of a Belgian law enacted in 1991. In 2003 Belgium enacted a new law which, in the applicants' submission, provides more favourable conditions for new transfers of that type. As the applicants had already transferred their rights, however, they were unable to take advantage of the provisions of the Law of 2003.

The applicants therefore submitted a request seeking to obtain the assistance provided for in Article 24 of the Staff Regulations. The European Parliament, which had no intention of assisting its officials and temporary servants to secure those transfers, rejected their request by decision of 14 November 2005.

By their action, the applicants contest that decision, which they treat as a refusal to afford assistance, in breach of Article 24 of the Staff Regulations. In addition to that article, they rely in support of their claims on a breach of the duty to have regard to the welfare of the staff, of the principle of non-discrimination, of the prohibition of arbitrary process, of the obligation to state reasons, of legitimate expectations and of the rule 'patere legem quam ipse fecisti' and on a misuse of powers.

Action brought on 3 March 2006 — Abad-Villanueva and Others v Commission

(Case F-23/06)

(2006/C 108/60)

Language of the case: French

Parties

Applicants: Roberto Abad-Villanueva and Others (represented by: T. Bontinck and J. Feld, lawyers)

Defendant: Commission of the European Communities

The Tribunal is asked to

— annul the decisions notifying the applicants of their change of category, in so far as those decisions allocate a grade lower than that which should have been obtained under the provisions of the Staff Regulations, maintain the mulitiplier coefficient and cancel the applicants' promotion points;

— declare that Article 12 of Annex XIII of the Staff Regulations is unlawful;

— order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicants were all successful candidates in internal competitions for change of category COM/PA/04 and COM/PB/04, in respect of which notices were published before the date on which the new Staff Regulations entered into force. After that date, they were appointed by the defendant to a higher category, but with the same grade, step and multiplier coefficient as before. By contrast, their promotion points were reset at zero.

In their application, the applicants submit that the appointment decisions infringe Articles 31 and 62 of the Staff Regulations and Article 2(1) and (2) and Article 5(2) of Annex XIII thereto, inasmuch as under those provisions they should have obtained a better grading. The defendant has thus infringed the right of all officials to be recruited to the grade stated in the competition notice, and has discriminated against the applicants as compared with the successful candidates in other competitions giving access to the same categories.

Furthermore, the applicants submit that there is no legal basis which permits the defendant to continue to apply to them the multiplier coefficients laid down by their former categories or to deprive them of the promotion points they have in their 'rucksacks'.

Finally, according to the applicants, the contested decisions also infringe the principles of the protection of legitimate expectations, the protection of acquired rights and equal treatment.

Action brought on 10 March 2006 — Abarca Montiel and Others v Commission

(Case F-24/06)

(2006/C 108/61)

Language of the case: French

Parties

Applicants: Sabrina Abarca Montiel and Others (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the decision of the authority authorised to conclude contracts of employment (AACC) of 21 November 2005 rejecting the complaints made by the applicants on various dates between 26 July 2005 and 17 August 2005, criticising the administrative decisions which fixed the grading and remuneration of each of the applicants and also criticising Article 7 of the decision adopted by the College of Commissioners on 27 April 2005 containing the 'General implementing provisions for the transitional measures applicable to staff employed by the Office for Infrastructure in Brussels in the day nurseries and kindergartens in Brussels' (GIP) and Annexes I and II to that decision;

— also, in so far as necessary, annulment of the decisions against which the abovementioned complaints were directed;

— an order that the Commission of the European Communities is to pay the costs.

Pleas in law and main arguments

The applicants, who are currently contract staff working in the day nurseries and kindergartens in Brussels, were already performing the same work under employment contracts subject to Belgian law before they were appointed as contract staff. They dispute their grading and their remuneration fixed by the defendant on their appointment as contract staff.

In the first plea in law of their application, the applicants submit that by application of the GIP and other provisions relating to the Commission's contract staff, they should have been graded in function group III instead of in function group II, in view of their qualifications and their length of service.

In the second plea in law, the applicants complain, inter alia, that they have not benefited from the minimum remuneration laid down in Article 6 of the GIP.

In the third plea in law, the applicants claim infringement of Article 2(2) of the Conditions of Employment of Other Servants (CEOS), of the Memorandum of Agreement concluded on 22 January 2002 between the Commission and the delegation of the staff of the day nurseries and kindergartens on contracts governed by Belgian law, of the principle of non-discrimination and of the general principles applicable in social security matters. In particular, calculation of the remuneration to be guaranteed to the applicants should not have taken child allowances into account.

Action brought on 10 March 2006 — Ider and Others v Commission

(Case F-25/06)

(2006/C 108/62)

Language of the case: French

Parties

Applicants: Béatrice Ider and Others (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the decision of the authority authorised to conclude contracts of employment (AACC) of 21 November 2005 rejecting the applicants' complaints of 26 July 2005 criticising the administrative decisions which fixed the grading and remuneration of each of the applicants and also criticising Article 8 of the decision adopted by the College of Commissioners on 27 April 2005 containing the 'General implementing provisions for the transitional measures applicable to staff employed by the Office for Infrastructure in Brussels in the day nurseries and kindergartens in Brussels' and Annexes I and II to that decision;

— also, in so far as necessary, annul the decisions against which the abovementioned complaints were directed;

— an order that the Commission of the European Communities is to pay the costs.

Pleas in law and main arguments

The applicants, who are currently contract staff working in the day nurseries and kindergartens in Brussels, were already performing the same work under employment contracts subject to Belgian law before they were appointed as contract staff. They dispute their grading and their remuneration fixed by the defendant on their appointment as contract staff.

In the first plea in law raised in their application, the applicants submit that pursuant to the Memorandum of Agreement concluded on 22 January 2002 between the Commission and the delegation of the staff of the day nurseries and kindergartens on contracts governed by Belgian law, they should have been given a more advantageous grading. Their grading in function group I, at grade I, constitutes a manifest error of assessment and a breach of the principle of non-discrimination, since they were regarded as inexperienced novices when they had a significant length of service.

In the second plea in law, the applicants claim infringement of Article 2(2) of the Conditions of Employment of Other Servants (CEOS), of the abovementioned Memorandum of Agreement, of the principle of non-discrimination and of the general principles applicable in social security matters. In particular, calculation of the remuneration to be guaranteed to the applicants should not have taken child allowances into account.

Action brought on 10 March 2006 — Bertolete and Others v Commission

(Case F-26/06)

(2006/C 108/63)

Language of the case: French

Parties

Applicants: Marli Bertolete and Others (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annulment of the decision of the authority authorised to conclude contracts of employment (AACC) of 21 November 2005 rejecting the applicants' complaints of 26 July 2005 criticising the administrative decisions which fixed the grading and remuneration of each of the applicants and also criticising Article 7 of the decision adopted by the College of Commissioners on 27 April 2005 containing the 'General implementing provisions for the transitional measures applicable to staff employed by the Office for Infrastructure in Brussels in the day nurseries and kindergartens in Brussels' (GIP) and Annexes I and II to that decision;

— also, in so far as necessary, annulment of the decisions against which the abovementioned complaints were directed;

— an order that the Commission of the European Communities is to pay the costs.

Pleas in law and main arguments

The applicants, who are currently contract staff working in the day nurseries and kindergartens in Brussels, were already performing the same work under employment contracts subject to Belgian law before they were appointed as contract staff. They dispute their grading and their remuneration fixed by the defendant on their appointment as contract staff.

In the first plea in law of their application, the applicants submit that by application of the GIP and other provisions relating to the Commission's contract staff, they should have been graded in function group III instead of in function group II, in view of their qualifications and their length of service.

In the second plea in law, the applicants complain, inter alia, that they have not benefited from the minimum remuneration laid down in Article 6 of the GIP.

In the third plea in law, the applicants claim infringement of Article 2(2) of the Conditions of Employment of Other Servants (CEOS), of the Memorandum of Agreement concluded on 22 January 2002 between the Commission and the delegation of the staff of the day nurseries and kindergartens on contracts governed by Belgian law, of the principle of non-discrimination and of the general principles applicable in social security matters. In particular, calculation of the remuneration to be guaranteed to the applicants should not have taken child allowances into account.

Action brought on 10 March 2006 — Lofaro v Commission

(Case F-27/06)

(2006/C 108/64)

Language of the case: French

Parties

Applicant: Alessandro Lofaro (Brussels, Belgium) (represented by: J.-L. Laffineur, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the decision of 6 June 2005 to extend the applicant's probationary period by 6 months, of the decision of 28 September 2005 to dismiss him at the end of that period, and of the reports at the expiry of the probationary periods on which those two decisions are based;

— So far as necessary, annulment of the decision of the authority authorised to conclude contracts of employment (AACC) of 23 November 2005 rejecting the applicant's complaint;

— An order that the defendant is to pay the applicant, as compensation for the loss suffered, damages assessed on equitable grounds at EUR 85 473 for material loss and EUR 50 000 for non-material loss, such amounts to be increased or reduced as appropriate during the proceedings;

— An order that the Commission of the European Communities is to pay the costs.

Pleas in law and main arguments

The applicant, a former temporary agent at the Commission, was employed from 16 September 2004 until 15 September 2009 under a contract which provided for a probationary period of 6 months, in accordance with Article 14 of the Conditions of Employment of Other Servants. Following an initial negative evaluation report, an extension of the probationary period by six months and a second negative evaluation report, the defendant ended that contract.

In his application, the applicant submits that the defendant made manifest errors of assessment. It is likewise alleged to have infringed the general principles which safeguard the right to dignity and to a defence and to have made superfluous critical comments.

Order of the Civil Service Tribunal of 21 March 2006 — Marenco v Commission

(Case F-96/05) [1]

(2006/C 108/65)

Language of the case: French

The President of the First Chamber has ordered that the case be removed from the register.

[1] OJ C 10 of 14.1.2006.

III

(Notices)

(2006/C 108/66)

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

OJ C 96, 22.4.2006

Past publications

OJ C 86, 8.4.2006

OJ C 74, 25.3.2006

OJ C 60, 11.3.2006

OJ C 48, 25.2.2006

OJ C 36, 11.2.2006

OJ C 22, 28.1.2006

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