ISSN 1725-2423

Official Journal of the European Union

C 69

English edition

Information and Notices

Volume 52

21 March 2009

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IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2009/C 69/01)

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

OJ C 55, 7.3.2009

Past publications

OJ C 44, 21.2.2009

OJ C 32, 7.2.2009

OJ C 19, 24.1.2009

OJ C 6, 10.1.2009

OJ C 327, 20.12.2008

OJ C 313, 6.12.2008

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Third Chamber) of 9 October 2008 (reference for a preliminary ruling from the Finanzgericht Hamburg, Germany) — Interboves GmbH v Hauptzollamt Hamburg-Jonas

(Case C-277/06) [1]

(Directive 91/628/EEC — Export refunds — Protection of animals during transport — Transport of bovine animals by sea between two geographical points of the Community — Vehicle loaded onto a vessel without unloading the animals — 12 hour rest period — Obligation)

(2009/C 69/02)

Language of the case: German

Referring court

Finanzgericht Hamburg

Parties to the main proceedings

Applicant: Interboves GmbH

Defendant: Hauptzollamt Hamburg-Jonas

Re:

Reference for a preliminary ruling — Finanzgericht Hamburg — Interpretation of point 48.7 (a) and (b) of Chapter VII of the annex to Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) — Need to allow a 12 hour rest period after transporting bovine animals by sea between two points within the Community by means of a vehicle taken on board a vessel without unloading of the animals

Operative part of the judgment

— *Point 48.7(a) of the Annex to Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Directive 95/29/EC of 29 June 1995, is to be interpreted as defining the general provisions applicable to transport by sea, including transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the European Community by means of vehicles loaded on to vessels without unloading of the animals, with the exception, so far as that type of vessel is concerned, of rest periods given to the animals after unloading, which are provided for in point 48.7(b) of that annex.*

— *In accordance with that latter provision, whether there is a connection between the periods of transport by road preceding and following a period of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals depends on whether or not the maximum duration of 28 hours of travel on a roll on/roll-off ferry referred to in paragraph 48.4(d) of the annex to Directive 91/628 has been exceeded.*

— *Where the duration of transport by roll-on/roll-off ferry on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals is less than the maximum duration of 28 hours, a period of transport by road can begin immediately after the animals are unloaded at the port of destination. In order to calculate the duration of that period, the duration of the period of transport by road which preceded transport by roll on/roll-off ferry should be taken into account, unless a rest period of at least 24 hours, in application of point 48.5 of the annex to Directive 91/628, has neutralised the period of transport by road preceding the transport by sea. It is for the national court to ascertain whether, in the dispute in the main proceedings, the journey at issue meets the abovementioned conditions.*

[1] OJ C 212, 2.9.2006.

Judgment of the Court (Second Chamber) of 29 January 2009 (reference for a preliminary ruling from the Consiglio di Stato — Italy) — Consiglio Nazionale degli Ingegneri v Ministero della Giustizia, Marco Cavallera

(Case C-311/06) ([1])

(Recognition of diplomas — Directive 89/48/EEC — Homologation of an educational qualification — Engineer)

(2009/C 69/03)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Consiglio Nazionale degli Ingegneri

Defendants: Ministero della Giustizia, Marco Cavallera

Re:

Reference for a preliminary ruling — Consiglio di Stato — Interpretation of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) — Whether applicable in the case of an Italian national who is registered in the Spanish professional register following recognition of equivalence of his engineering degree but who has never pursued that profession in Spain and who applies, on the basis of the Spanish qualification authorising him to pursue that profession, to be entered in the professional register in Italy

Operative part of the judgment

The provisions of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration cannot be relied on, for the purpose of gaining access to a regulated profession in a host Member State, by the holder of a certificate issued by an authority of another Member State which does not attest any education or training covered by the education system of that Member State and is not based on either an examination taken or professional experience acquired in that Member State.

([1]) OJ C 249, 14.10.2006.

Judgment of the Court (Grand Chamber) of 20 January 2009 (references for a preliminary ruling from the Landesarbeitsgericht Düsseldorf (Germany) and House of Lords (United Kingdom)) — Gerhard Schultz-Hoff v Deutsche Rentenversicherung Bund

(Joined Cases C-350/06 and C-520/06) ([1])

(Working conditions — Organisation of working time — Directive 2003/88/EC — Right to paid annual leave — Sick leave — Annual leave coinciding with sick leave — Compensation for paid annual leave not taken before the end of the contract because of sickness)

(2009/C 69/04)

Language of the case: German and English

Referring courts

Landesarbeitsgericht Düsseldorf, House of Lords

Parties to the main proceedings

Applicants: Gerhard Schultz-Hoff (C-350/06), Stringer and Others (C-520/06)

Defendants: Deutsche Rentenversicherung Bund (C-350/06), Her Majesty's Revenue and Customs (C-520/06)

Re:

Reference for a preliminary ruling — Landesarbeitsgericht Düsseldorf, House of Lords — Interpretation of Article 7(1) and (2) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ L 299, p. 9) — Right to paid annual leave subject to the following conditions: actual presence in the workplace, maintenance of the capacity to work during the leave, and exercise not capable of extension beyond a deadline in the following year — Right of a worker on indefinite sick leave to take annual leave during that sick leave — Right of a worker who has been dismissed while on long-term sick leave to receive compensation for the annual leave not taken during the leave year

Operative part of the judgment

1. *Article 7(1) of Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time must be interpreted as not precluding national legislation or practices according to which a worker on sick leave is not entitled to take paid annual leave during that sick leave.*

2. *Article 7(1) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that the right to paid annual leave is extinguished at the end of the leave year and/or of a carry-over period laid down by national law even where the worker has been on sick leave for the whole or part of the leave year and where his incapacity to work has persisted until the end of his employment relationship, which was the reason why he could not exercise his right to paid annual leave.*

3. *Article 7(2) of Directive 2003/88 must be interpreted as precluding national legislation or practices which provide that, on termination of the employment relationship, no allowance in lieu of paid annual leave not taken is to be paid to a worker who has been on sick leave for the whole or part of the leave year and/or of a carry-over period, which was the reason why he could not exercise his right to paid annual leave. For the calculation of the allowance in lieu, the worker's normal remuneration, which is that which must be maintained during the rest period corresponding to the paid annual leave, is also decisive.*

([1]) OJ C 281, 18.11.2006.
OJ C 56, 10.3.2007.

Judgment of the Court (Grand Chamber) of 25 November 2008 (reference for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)) — Heemskerk BV, Firma Schaap v Productschap Vee en Vlees

(Case C-455/06) ([1])

(Regulations (EC) Nos 615/98, 1254/1999 and 800/1999 — Directive 91/628/EEC — Export refunds — Protection of bovine animals during transport — Power of an administrative authority of a Member State to find, contrary to the declaration of the official veterinarian, that the means of transport of the animals does not comply with Community legislation — Jurisdiction of national courts of Member States — Examination of their own motion of pleas in law derived from Community law — National rule prohibiting reformatio in pejus)

(2009/C 69/05)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Heemskerk BV, Firma Schaap

Defendant: Productschap Vee en Vlees

Re:

Reference for a preliminary ruling — College van Beroep voor het bedrijfsleven — Interpretation of Article 2(2) of Commission Regulation No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport (OJ 1998 L 82, p. 19), of Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organization of the market in beef and veal (OJ 1999 L 160, p. 21), of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) and of Commission Regulation (EC) No 800/1999 of 15 April 1999 laying down common detailed rules for the application of the system of export refunds on agricultural products (OJ 1999 L 102, p. 11) — Power of an administrative authority of a Member State to find, contrary to the declaration of the official veterinarian, that the means of transport is not in accordance with Community provisions — Assessment based on criteria of the Member State concerned or of the Member State in which the vessel transporting the animals is registered — Powers of the courts of the Member States.

Operative part of the judgment

1. *Commission Regulation (EC) No 615/98 of 18 March 1998 laying down specific detailed rules of application for the export refund arrangements as regards the welfare of live bovine animals during transport, and, in particular, Articles 1 and 5(3) and (7) thereof, must be interpreted as meaning that a national authority with competence for export refunds is empowered to decide that a transport of animals was not carried out in accordance with the provisions of Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC, as amended by Council Directive 95/29/EC of 29 June 1995, although, under Article 2(3) of that regulation, the official veterinarian had certified that that transport complied with the provisions of that directive. In order to reach that conclusion, that authority must rely on objective elements relating to the welfare of the animals such as to call into question the documents presented by the exporter, it being for the latter to show, in that case, that the elements relied on by the competent authority for its finding of non-compliance with Directive 91/628, as amended by Directive 95/29, are irrelevant.*

2. *Where a vessel has been authorised for the transport of animals in respect of a certain surface area by the Member State of registration of the vessel, the competent authority of the Member State of export must take that authorisation as a basis for assessing whether Community legislation on the welfare of animals during transport has been complied with.*

3. *The notion of 'compliance with the provisions established in Community legislation concerning animal welfare' referred to in Article 33(9) of Council Regulation (EC) No 1254/1999 of 17 May 1999 on the common organisation of the market in beef and veal must be interpreted as meaning that, where it is established that the Community requirements relating to loading density laid down in Chapter VI, point 47(B) of the Annex to Directive 91/628, as amended by Directive 95/29, were not complied with during the transport of the animals, it is necessary, in principle, to make a finding of non-compliance with those provisions in respect of all the live animals transported.*

4. *Community law does not require national courts to apply, of their own motion, a provision of Community law where such application would lead them to deny the principle, enshrined in the relevant national law, of the prohibition of reformatio in pejus.*

([1]) OJ C 20, 27.1.2007.

Judgment of the Court (First Chamber) of 22 January 2009 — Commission of the European Communities v Portuguese Republic

(Case C-150/07) ([1])

(Failure of a Member State to fulfil its obligations — Late payment of own resources — Default interest payable — Accounting rules — ATA system)

(2009/C 69/06)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, J.A. Anjos and C. Guerra Santos, acting as Agents)

Re:

Failure of a Member State to fulfil its obligations — Infringement of Articles 2, 6(2), 9, 10 and 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources (OJ 1989 L 155, p. 1) — Refusal to pay default interest in the case of late payment of own resources under the ATA system — Accounting rules

Operative part of the judgment

The Court:

1. *Declares that, by refusing to pay to the Commission of the European Communities the default interest payable on account of the late payment of own resources under the ATA system, the Portuguese Republic has failed to fulfil its obligations under Articles 2, 6(2) and 9 to 11 of Council Regulation (EEC, Euratom) No 1552/89 of 29 May 1989 implementing Decision 88/376/EEC, Euratom on the system of the Communities' own resources;*

2. *Dismisses the remainder of the action;*

3. *Orders the Portuguese Republic to bear its own costs and to pay three quarters of the costs of the Commission of the European Communities;*

4. *Orders the Commission of the European Communities to bear the remainder of its own costs.*

([1]) OJ C 117, 26.5.2007.

Judgment of the Court (Eighth Chamber) of 9 October 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-230/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2002/22/EC — Electronic communications — Single European emergency call number — Caller location — Failure to transpose within the period prescribed)

(2009/C 69/07)

Language of the case: Dutch

Parties

Applicant: Commission of the European Communities (represented by: W. Wils and M. Shotter, acting as Agents)

Defendant: Kingdom of the Netherlands (represented by: C.M. Wissels)

Intervener in support of the defendant: Republic of Lithuania (represented by: D. Kriaučiūnas, agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, the measures necessary to comply with Article 26(3) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive) (OJ L 108, p. 51)

Operative part of the judgment

The Court:

1. *declares that by not making, for calls to the single European emergency call number '112', caller location information available to authorities handling emergencies, to the extent technically feasible, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 26(3) of Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services (Universal Service Directive);*

2. *orders the Kingdom of the Netherlands to pay the costs;*

3. *orders the Republic of Lithuania to bear its own costs.*

([1]) OJ C 155, 7.7.2007.

Judgment of the Court (Grand Chamber) of 20 January 2009 (reference for a preliminary ruling from the Bundesgerichtshof (Germany)) — Sony Music Entertainment (Germany) GmbH v Falcon Neue Medien Vertrieb GmbH

(Case C-240/07) ([1])

(Rights related to copyright — Rights of phonogram producers — Reproduction right — Distribution right — Term of protection — Directive 2006/116/EC — Rights of nationals of non-Member States)

(2009/C 69/08)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Sony Music Entertainment (Germany) GmbH

Defendant: Falcon Neue Medien Vertrieb GmbH

Re:

Reference for a preliminary ruling — Bundesgerichtshof — Interpretation of Article 10(2) of Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights (OJ 2006 L 372, p. 12) — Application of the term of protection to subject-matter that has not at any time been protected in the Member State in which protection is sought and whose rightholder is not a Community national.

Operative part of the judgment

1. *The term of protection laid down by Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights is also applicable, pursuant to Article 10(2) thereof, where the subject-matter at issue has at no time been protected in the Member State in which the protection is sought.*

2. *Article 10(2) of Directive 2006/116 is to be interpreted as meaning that the terms of protection provided for by that directive apply in a situation where the work or subject-matter at issue was, on 1 July 1995, protected as such in at least one Member State under that Member State's national legislation on copyright and related rights and where the holder of such rights in respect of that work or subject-matter, who is a national of a non-Member State, benefited, at that date, from the protection provided for by those national provisions.*

([1]) OJ C 170, 21.7.2007.

Judgment of the Court (Second Chamber) of 29 January 2009 (references for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt Hamburg-Jonas v Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb GmbH & Co.

(Joined Cases C-278/07 to C-280/07) ([1])

(Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests — Article 3 — Recovery of an export refund — Determining the limitation period — Irregularities committed before the entry into force of Regulation (EC, Euratom) No 2988/95 — Rule on limitation forming part of the general civil law of a Member State)

(2009/C 69/09)

Language of the case: German

Referring court

Bundesfinanzhof, Germany

Parties to the main proceedings

Applicant: Hauptzollamt Hamburg-Jonas

Defendants: Josef Vosding Schlacht-, Kühl- und Zerlegebetrieb GmbH & Co. (C-278/07), Vion Trading GmbH (C-279/07), Ze Fu Fleischhandel GmbH (C-280/07),

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the first sentence of the first subparagraph of Article 3(1) and of Article 3(3) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) — Determination of the limitation period applicable to irregularities committed before the entry into force of Regulation No 2988/95 and involving recovery of an export refund

Operative part of the judgment

1) *The limitation period laid down in the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests is applicable to administrative measures such as the recovery of export refunds wrongly received by the exporter as a result of irregularities it committed.*

2) *In situations such as those at issue in the main proceedings, the limitation period provided for in the first subparagraph of Article 3 (1) of Regulation No 2988/95:*

   — *applies to irregularities committed before the entry into force of that regulation;*

   — *starts to run from the date on which the irregularity at issue was committed.*

3) *The longer limitation periods which Member States retain the possibility of applying under Article 3(3) of Regulation No 2988/95 may result from general provisions of law predating the adoption of that regulation.*

(1) OJ C 211, 8.9.2007.

Judgment of the Court (Second Chamber) of 15 January 2009 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — Hauptzollamt Hamburg-Jonas v Bayerische Hypotheken- und Vereinsbank AG

(Case C-281/07) (1)

(Regulation (EC, Euratom) No 2988/95 — Protection of the European Communities' financial interests — Article 3 — Recovery of an export refund — Error on the part of the national authorities — Limitation period)

(2009/C 69/10)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hauptzollamt Hamburg-Jonas

Defendant: Bayerische Hypotheken- und Vereinsbank AG

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the first sentence of the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests (OJ 1995 L 312, p. 1) — Applicability of the time-limit laid down by Regulation No 2988/95 in the case of recovery of an export refund granted as a result of an error on the part of the national authorities but without any wrongdoing on the part of the trader concerned

Operative part of the judgment

The limitation period of four years laid down in the first subparagraph of Article 3(1) of Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities' financial interests is not applicable to a claim for recovery of an export refund unduly granted to an exporter as a result of an error on the part of the national authorities, where that exporter did not commit any irregularity within the meaning of Article 1(2) of that regulation.

(1) OJ C 211, 8.9.2007.

Judgment of the Court (Grand Chamber) of 27 January 2009 (reference for a preliminary ruling from the Bundesfinanzhof (Germany)) — Hein Persche v Finanzamt Lüdenscheid

(Case C-318/07) ([1])

(Free movement of capital — Income tax — Deduction of gifts to bodies recognised as charitable — Deduction restricted to gifts to national bodies — Gifts in kind — Directive 77/799/EEC — Mutual assistance by the competent authorities of the Member States in the field of direct taxation)

(2009/C 69/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: Hein Persche

Defendant: Finanzamt Lüdenscheid

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of the third paragraph of Article 5 EC, Article 56 EC and Council Directive 77/799/EEC of 19 December 1977 concerning mutual assistance by the competent authorities of the Member States in the field of direct taxation (OJ 1977 L 336, p. 15) — National legislation under which the grant of the tax advantage for gifts to bodies pursuing objectives of public interest is conditional upon the donee being established in national territory — Applicability of the rules of the EC Treaty on the free movement of capital to gifts in kind, in the form of goods of daily use, made by a national of a Member State to bodies pursuing charitable objectives and having their seat in another Member State

Operative part of the judgment

1. *Where a taxpayer claims, in a Member State, the deduction for tax purposes of gifts to bodies established and recognised as charitable in another Member State, such gifts come within the compass of the provisions of the EC Treaty relating to the free movement of capital, even if they are made in kind in the form of everyday consumer goods.*

2. *Article 56 EC precludes legislation of a Member State by virtue of which, as regards gifts made to bodies recognised as having charitable status, the benefit of a deduction for tax purposes is allowed only in respect of gifts made to bodies established in that Member State, without any possibility for the taxpayer to show that a gift made to a body established in another Member State satisfies the requirements imposed by that legislation for the grant of such a benefit.*

([1]) OJ C 247, 20.10.2007.

Judgment of the Court (First Chamber) of 22 January 2009 (reference for a preliminary ruling from the Bundesfinanzhof — Germany) — STEKO Industriemontage GmbH v Finanzamt Speyer-Germersheim

(Case C-377/07) ([1])

(Corporation tax — Transitional provisions — Deduction of the depreciation of holdings in non-resident companies)

(2009/C 69/12)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: STEKO Industriemontage GmbH

Defendant: Finanzamt Speyer-Germersheim

Re:

Reference for a preliminary ruling — Bundesfinanzhof — Interpretation of Article 56 EC — Corporation tax — Transitional provisions for the year 2001 prohibiting a company from deducting the depreciation in value of its foreign shareholdings

Operative part of the judgment

In circumstances such as those of the main proceedings, in which a resident capital company has a holding of less than 10 % in another capital company, Article 56 EC must be interpreted as precluding a prohibition on the deduction of reductions in profit in connection with such a holding which enters into force earlier with regard to a holding in a non-resident company than with regard to a holding in a resident company.

([1]) OJ C 283, 24.11.2007.

Judgment of the Court (Second Chamber) of 22 January 2009 (reference for a preliminary ruling from the Conseil d'État (France)) — Association nationale pour la protection des eaux et rivières — TOS, Association OABA v Ministère de l'écologie, du développement et de l'aménagement durables

(Case C-473/07) ([1])

(Pollution and nuisance — Directive 96/61/EC — Annex I — Subheading 6.6(a) — Intensive rearing of poultry — Definition — Meaning of 'poultry' — Maximum number of animals per installation)

(2009/C 69/13)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicants: Association nationale pour la protection des eaux et rivières — TOS, Association OABA

Defendant: Ministère de l'écologie, du développement et de l'aménagement durables

Intervener: Association France Nature Environnement

Re:

Reference for a preliminary ruling — Conseil d'État (France) — Interpretation of Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26) — Scope *ratione materiae* of the directive — Installations for the intensive rearing of poultry with more than 40 000 places (subject to an authorisation requirement) (subheading 6.6(a) of Annex I to the directive) — Concepts of 'poultry' and 'places' — Whether quail, partridge and pigeon are included within the scope of the directive — If so, whether national legislation which gives weighting to the number of animals per place according to species is permissible

Operative part of the judgment

1. *The term 'poultry', which appears in subheading 6.6(a) of Annex I to Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, must be interpreted as including quails, partridges and pigeons.*

2. *Subheading 6.6(a) of Annex I to Directive 96/61, as amended by Regulation No 1882/2003, precludes national legislation, such as that at issue in the main proceedings, which calculates the thresholds for authorisation of installations for intensive rearing on the basis of a system of 'animal-equivalents' founded on a weighting of animals by places according to species so that account may be taken of the amount of nitrogen actually excreted by the various bird species.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Fifth Chamber) of 22 January 2009 — Commission of the European Communities v Republic of Poland

(Case C-492/07) ([1])

(Failure of a Member State to fulfil its obligations — Directive 2002/21/EC — Electronic communications networks and services — Definition of subscriber)

(2009/C 69/14)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: A. Nijenhuis and K. Mojzesowicz, acting as Agents)

Defendant: Republic of Poland (represented by: M. Dowgielewicz, Agent)

Re:

Failure of a Member State to fulfil its obligations — Failure to adopt within the prescribed period the necessary measures to comply with Article 2(k) of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) (OJ 2002 L 108, p. 33) — Definition of subscriber.

Operative part of the judgment

The Court:

1. *Declares that, by failing to transpose correctly Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) and in particular Article 2(k) thereof with reference to the definition of 'subscriber', the Republic of Poland has failed to fulfil its obligations under that directive;*

2. *Orders the Republic of Poland to pay the costs.*

([1]) OJ C 22, 26.1.2008.

Judgment of the Court (Fourth Chamber) of 29 January 2009 (reference for a preliminary ruling from the Kammarrätten i Stockholm, Migrationsöverdomstolen, Sweden) — Migrationsverket v Edgar Petrosian, Nelli Petrosian, Svetlana Petrosian, David Petrosian, Maxime Petrosian

(Case C-19/08) ([1])

(Right of asylum — Regulation (EC) No 343/2003 — Taking back by a Member State of an asylum seeker whose application has been refused and who is in another Member State where he has submitted a fresh asylum application — Start of the period for implementation of transfer of the asylum seeker — Transfer procedure the subject-matter of an appeal having suspensive effect)

(2009/C 69/15)

Language of the case: Swedish

Referring court

Kammarrätten i Stockholm, Migrationsöverdomstolen

Parties to the main proceedings

Applicant: Migrationsverket

Defendants: Edgar Petrosian, Nelli Petrosian, Svetlana Petrosian, David Petrosian, Maxime Petrosian

Re:

Reference for a preliminary ruling — Kammarrätten i Stockholm, Migrationsöverdomstolen (Sweden) — Interpretation of Articles 20(1)(d) and 2 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1) — Taking back by a Member State of an applicant for asylum who is in another Member State and lodged another application for asylum there — Start of the period for transfer of the asylum seeker

Operative part of the judgment

Article 20(1)(d) and Article 20(2) of Regulation No 343/2003 of Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national are to be interpreted as meaning that, where the legislation of the requesting Member State provides for suspensive effect of an appeal, the period for implementation of the transfer begins to run, not as from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only as from the time of the judicial decision which rules on the merits of the procedure and which is no longer such as to prevent its implementation.

([1]) OJ C 64, 8.3.2008.

Order of the Court (Eighth Chamber) of 12 December 2008 — Aktieselskabet af 21. november 2001 v Office for Harmonisation in the Internal Market (Trade Marks and Designs), TDK Kabushiki Kaisha (TDK Corp.)

(Case C-197/07 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(5) — Reputation — Taking unfair advantage of the distinctive character or the repute of the earlier mark — Application for registration as a Community trade mark of the word mark 'TDK' — Opposition by the proprietor of the Community and national word and figurative marks TDK — Refusal to register)

(2009/C 69/16)

Language of the case: English

Parties

Appellant: Aktieselskabet af 21. november 2001 (represented by: C. Barrett Christiansen, advokat)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, Agent), TDK Kabushiki Kaisha (TDK Corp.) (represented by: A. Norris, Barrister)

Re:

Appeal brought against the judgment of the First Chamber of the Court of First Instance of 6 February 2007 in Case T-477/04 *Aktieselskabet af 21. November 2001* v *OHIM* dismissing as unfounded an action brought by the applicant for the word mark 'TDK' for goods in Class 25 against Decision R 364/2003-1 of the First Board of Appeal of OHIM of 7 October 2004 rejecting the appeal brought against the Opposition Division refusing registration of that mark in the context of opposition proceeding brought by the proprietor of the Community and national word and figurative marks 'TDK'

Operative part of the order

1. *The appeal is dismissed.*

2. *Aktieselskabet af 21. november 2001 shall pay the costs.*

([1]) OJ C 129, 9.6.2007.

Order of the Court of 11 September 2008 — Coats Holdings Ltd, J & P Coats Ltd v Commission of the European Communities

(Case C-468/07 P) ([1])

(Appeal — Article 119 of the Rules of Procedure — Competition — Agreements, decisions and concerted practices — Fine — Claim seeking reduction of the fine set by the Court of First Instance)

(2009/C 69/17)

Language of the case: English

Parties

Appellants: Coats Holdings Ltd, J & P Coats Ltd (represented by: W. Sibree and C. Jeffs, Solicitors)

Other party to the proceedings: Commission of the European Communities (represented by: F. Castillo de la Torre and K. Mojzesovicz, Agents)

Re:

Appeal against the judgment delivered by the Second Chamber of the Court of First Instance on 12 September 2007 in Case T-36/05 *Coats Holdings Ltd and J & P Coats Ltd* v *Commission of the EC* by which the Court partly annulled Commission Decision C(2004) 4221 final of 26 October 2004 relating to a proceeding under Article 81 EC (Case COMP/F-1/38.338 — PO/Needles) concerning market sharing agreements in respect of haberdashery products and geographic market sharing agreements, and set the amount of the fine imposed on the applicants at EUR 20 million — Application for the fine to be reduced

Operative part of the order

1. *The appeal is dismissed.*

2. *Coats Holdings Ltd and J & P Coats Ltd are ordered to pay the costs.*

([1]) OJ C 297, 8.12.2007.

Order of the Court of 25 November 2008 — Territorio Energia Ambiente SpA (TEA) v Commission of the European Communities

(Case C-500/07 P) ([1])

(Appeal — Action for annulment — Time limit for bringing proceedings — Starting point — Action seeking a ruling from the Court of First Instance on the personal scope of a Commission decision — Manifest lack of jurisdiction)

(2009/C 69/18)

Language of the case: Italian

Parties

Appellant: Territorio Energia Ambiente SpA (TEA) (represented by: E. Coffrini and F. Tesauro, avvocati)

Other party to the proceedings: Commission of the European Communities (represented by: E. Righini and G. Conte, agents)

Re:

Appeal against the order made by the Court of First Instance (Fourth Chamber) on 17 September 2007 in Case T-175/07 *Territorio Energia Ambiente SpA* v *Commission* by which the Court of First Instance dismissed an application for a ruling, primarily, that Commission Decision 2003/193/EC of 5 June 2002 on State aid granted by Italy in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21) did not apply to the appellant and, in the alternative, that the appellant did not benefit from any unlawful aid, and for the consequential annulment, in so far as necessary, of that decision

Operative part of the order

1. *The appeal is dismissed.*

2. *Territorio Energia Ambiente SpA (TEA) is ordered to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Order of the Court of 25 November 2008 — S.A.BA.R. SpA v Commission of the European Communities

(Case C-501/07 P) ([1])

(Appeal — Action for annulment — Time-limit for initiating proceedings — Starting point)

(2009/C 69/19)

Language of the case: Italian

Parties

Appellant: S.A.BA.R. SpA (represented by: E. Coffrini and F. Tesauro, lawyers)

Other party to the proceedings: Commission of the European Communities (represented by: E. Righini and G. Conte, Agents)

Re:

Appeal lodged against the order of the Court of First Instance (Fourth Chamber) of 17 September 2007 in Case T-176/07 *S.A. BA.R.* v *Commission* by which the Court of First Instance dismissed the application for annulment of the Commission decision of 5 June 2002 declaring incompatible with the common market the aid scheme (C-27/99 ex NN 69/98) provided for under Italian legislation in the form of tax exemptions and subsidised loans to public utilities with a majority public capital holding (OJ 2003 L 77, p. 21).

Operative part of the order

1. *The appeal is dismissed.*

2. *S.A.BA.R. SpA is ordered to pay the costs.*

([1]) OJ C 37, 9.2.2008.

Order of the Court (Sixth Chamber) of 17 October 2008 — AGC Flat Glass Europe SA, formerly Glaverbel SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-513/07 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 7(3) — Figurative mark representing the texture of a glass surface — Refusal of registration — Evidence of distinctive character acquired through use — Target public and territory to be considered)

(2009/C 69/20)

Language of the case: English

Parties

Applicant: AGC Flat Glass Europe SA, formerly Glaverbel SA (represented by: T. Koerl, lawyer)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: O. Mondéjar Ortuño, Agent)

Re:

Appeal brought against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-141/06 *Glaverbel* v *OHIM* by which the Court dismissed an action seeking annulment of Decision R 986/2004-4 of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 1 March 2006 dismissing the action brought against the examiner's decision refusing registration of a figurative mark representing the texture of a glass surface for certain goods in Classes 19 and 21.

Operative part of the order

1. *The appeal is dismissed.*

2. *AGC Flat Glass Europe SA is ordered to pay the costs.*

([1]) OJ C 51, 23.2.2008.

Order of the Court of 28 November 2008 — Philippe Combescot v Commission of the European Communities

(Case C-525/07 P) ([1])

(Appeal — Officials — Career development report — Duty to provide assistance — Mental harassment — Compensation for damage — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2009/C 69/21)

Language of the case: Italian

Parties

Appellant: Philippe Combescot (represented by: A. Maritati and V. Messa, avvocati)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall, Agent, and S. Corongiu, avocat)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-249/04 *Combescot* v *Commission*, by which the Court of First Instance dismissed an application for, first, recognition that the conduct of the appellant's hierarchical superiors was unlawful; recognition that the appellant had the right to assistance; and annulment of the appellant's career development report for the period from 1 July 2001 to 31 December 2002; and, second, payment of compensation for the damage allegedly suffered by the appellant.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Combescot shall pay the costs of the appeal.*

([1]) OJ C 37, 9.2.2008.

Order of the Court of 28 November 2008 — Philippe Combescot v Commission of the European Communities

(Case C-526/07 P) ([1])

(Appeal — Officials — Appointment to the post of Head of Delegation in Colombia — Exclusion from competition — Application for damages — Determination of the extent of compensation — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2009/C 69/22)

Language of the case: Italian

Parties

Appellant: Philippe Combescot (represented by: A. Maritati and V. Messa, avvocati)

Other party to the proceedings: Commission of the European Communities (represented by: J. Currall, Agent, and S. Corongiu, avocat)

Re:

Appeal against the judgment of the Court of First Instance (Second Chamber) of 12 September 2007 in Case T-250/04 *Combescot* v *Commission*, by which the Court of First Instance dismissed the appellant's application for recognition that the decision excluding him from the competition for appointment to the post of Head of Delegation in Colombia was unlawful; dismissed the same application for annulment of the procedure of that competition and of the decision making the appointment to the post concerned; and held that there was only non-material damage, rejecting the claim for compensation for the other heads of damage raised by the appellant.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Combescot shall pay the costs of the appeal.*

([1]) OJ C 37, 9.2.2008.

Order of the Court (Sixth Chamber) of 9 December 2008 — Enercon GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-20/08 P) ([1])

(Appeal — Community trade mark — Three-dimensional mark made up of the shape of the product — Regulation (EC) No 40/94 — Article 7(1) — Distinctive character of the mark — Appeal in part manifestly inadmissible and in part manifestly unfounded)

(2009/C 69/23)

Language of the case: German

Parties

Appellant: Enercon GmbH (represented by: R. Böhm and U. Sander, Rechtsanwälte)

Other party to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: G. Schneider, agent)

Re:

Appeal against the judgment of the Court of First Instance (Fifth Chamber) of 15 November 2007 in Case T-71/06 *Enercon GmbH* v *OHIM*, by which the Court of First Instance dismissed the action for annulment of the decision of the Second Board of Appeal of OHIM of 30 November 2005 rejecting the action for annulment of the examiner's decision refusing to register a three-dimensional Community trade mark depicting the outer casing of the nacelle of a wind turbine for goods in Class 7 — Distinctive character of a three-dimensional mark made up of the shape of the product

Operative part of the order

1. *The appeal is dismissed.*

2. *Enercon GmbH is ordered to pay the costs.*

([1]) OJ C 79, 29.3.2008.

Order of the Court (Seventh Chamber) of 13 November 2008 — Miguel Cabrera Sánchez v Office for Harmonisation in the Internal Market (Trade Marks and Designs) and Industrias Cárnicas Valle SA

(Case C-81/08 P) ([1])

(Appeal — Community trade mark — Regulation (EC) No 40/94 — Article 8(1)(b) — Likelihood of confusion — Mixed word and figurative mark — Opposition by the proprietor of an earlier mark)

(2009/C 69/24)

Language of the case: Spanish

Parties

Appellant: Miguel Cabrera Sánchez (represented by: J. Calderón Chavero, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: J. García Murillo, Agent) and Industrias Cárnicas Valle SA

Re:

Appeal against the judgment of the Court of First Instance (Third Chamber) of 13 December 2007 in Case T-242/06 *Cabrera Sánchez* v *OHIM* and *Industrias Cárnicas Valle*, by which the Court dismissed the action against the decision of the First Board of Appeal of OHIM of 15 June 2006 (Case R 790/2005-01), relating to opposition proceedings between Miguel Cabrera Sánchez and Industrias Cárnicas Valle SA.

Operative part of the order

1. *The appeal is dismissed.*

2. *Mr Cabrera Sánchez shall pay the costs.*

([1]) OJ C 128, 24.5.2008.

Order of the Court (Third Chamber) of 27 November 2008 (reference for a preliminary ruling from the Niedersächsisches Finanzgericht (Germany)) — Monika Vollkommer v Finanzamt Hannover-Land I

(Case C-156/08) ([1])

(Article 104(3) of the Rules of Procedure — Sixth VAT Directive — Article 33(1) — Meaning of 'turnover taxes' — Real property transfer tax)

(2009/C 69/25)

Language of the case: German

Referring court

Niedersächsisches Finanzgericht (Germany)

Parties

Applicant: Monika Vollkommer

Defendant: Finanzamt Hannover-Land I

Re:

Reference for a preliminary ruling — Niedersächsisches Finanzgericht — Interpretation of Article 33(1) of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1) and of Article 401 of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ 2006 L 347, p. 1) — Account taken, for the purposes of determining the basis of assessment of real property transfer tax ('Grunderwerbsteuer'), of future building work subject to turnover tax if the purchase includes both the supply of the building plot and the building work

Operative part of the order

Article 33 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, as amended by Council Directive 91/680/EEC of 16 December 1991, must be interpreted as not precluding a Member State, on the transfer of a plot of land not yet built on, from including future building work in the taxable amount used for the assessment of taxes on transfers and transactions — such as the 'Grunderwerbsteuer' provided for under German law — and thereby making a transaction that is subject to value added tax under that directive subject also to those other taxes, provided that the latter cannot be characterised as turnover taxes.

([1]) OJ C 183, 19.7.2008.

Order of the Court (Fifth Chamber) of 3 October 2008 (reference for a preliminary ruling from the Tribunale ordinario di Milano (Italy)) — Crocefissa Savia, Monica Maria Porcu, Ignazia Randazzo, Daniela Genovese, Mariangela Campanella v Ministero dell'Istruzione, dell'Università e della Ricerca, Direzione Didattica II Circolo — Limbiate, Úfficio Scolastico Regionale per la Lombardia, Direzione Didattica III Circolo — Rozzano, Direzione Didattica IV Circolo — Rho, Istituto Comprensivo — Castano Primo, Istituto Comprensivo A. Manzoni — Rescaldina

(Case C-287/08) ([1])

(Reference for a preliminary ruling — No link with Community law — Court clearly lacking jurisdiction)

(2009/C 69/26)

Language of the case: Italian

Referring court

Tribunale ordinario di Milano

Parties

Applicants: Crocefissa Savia, Monica Maria Porcu, Ignazia Randazzo, Daniela Genovese, Mariangela Campanella

Defendants: Ministero dell'Istruzione, dell'Università e della Ricerca, Direzione Didattica II Circolo — Limbiate, Úfficio Scolastico Regionale per la Lombardia, Direzione Didattica III Circolo — Rozzano, Direzione Didattica IV Circolo — Rho, Istituto Comprensivo — Castano Primo, Istituto Comprensivo A. Manzoni — Rescaldina

Re:

Reference for a preliminary ruling — Tribunale ordinario di Milano — Interpretation of Article 6(2) EU and of Article 6 of the European Convention on Human Rights — Right to a fair trial — National legislation with retroactive effect which introduces changes in salary conditions under the contract of employment

Operative part of the order

The Court of Justice of the European Communities manifestly does not have jurisdiction to answer the questions posed by the Tribunale ordinario di Milano by decision of 16 June 2008.

([1]) OJ C 236, 13.9.2008.

Action brought on 25 September 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-424/08)

(2009/C 69/27)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and B. Sipos, Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that the Federal Republic of Germany has failed to fulfil its obligations under Article 11(1)(c) of Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances, inasmuch as the competent German authorities have failed to draw up external emergency plans for all establishments to which Article 9 of the said Directive applies;

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

Pleas in law and main arguments

Article 11(1)(c) of Directive 96/82/EC requires Member States to ensure that, for all establishments to which Article 9 applies, the competent authorities draw up an external emergency plan for the measures to be taken outside the establishment. The external emergency plans must contain not only information concerning remedial measures on-site and off-site, but also specific information for the public concerning the accident and the requisite behaviour to be adopted. In addition, the information intended for the emergency services of other Member States in the case of a major accident which is capable of causing transboundary effects must also appear in the external emergency plans.

The present action seeks a declaration that the Federal Republic of Germany has failed to fulfil its obligations under Article 11(1)(c) of Directive 96/82/EC, inasmuch as it has failed to draw up external emergency plans for all establishments to which Article 9 of the said Directive applies.

Reference for a preliminary ruling from the Landgericht Tübingen (Germany) lodged on 15 October 2008 — FGK Gesellschaft für Antriebsmechanik mbH v Notar Gerhard Schwenkel

(Case C-450/08)

(2009/C 69/28)

Language of the case: German

Referring court

Landgericht Tübingen

Parties to the main proceedings

Applicant: FGK Gesellschaft für Antriebsmechanik mbH

Defendant: Notar Gerhard Schwenkel

Party Involved: President of the Landgericht Tübingen

Question referred

1. Is Council Directive 69/335/EEC of 17 July 1969 concerning indirect taxes on the raising of capital [1](as amended by Council Directive 85/303/EEC of 10 June 1985) to be interpreted as meaning that the charges of a notary employed as a civil servant for the drawing up of a notarially attested act recording a transaction covered by that directive constitute taxes for the purposes of that directive where, under the relevant national legislation, even notaries who are civil servants may be authorised to practise and are themselves owed the charges arising from that act and the State, on the basis of a general waiver, does not receive any portion of the charges for the authentication of transactions covered by the Directive?

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[1] OJ L 249, p. 25.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden (Netherlands) lodged on 23 October 2008 — Don Bosco Onroerend Goed BV; other party: Staatssecretaris van Financiën

(Case C-461/08)

(2009/C 69/29)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Applicant: Don Bosco Onroerend Goed BV

Other Party: Staatssecretaris van Financiën

Questions referred

1. Must Article 13B(g) in conjunction with Article 4(3)(a) of the Sixth Directive [1] be interpreted as meaning that tax is charged on the supply of a building which has been partly demolished with a view to the replacement of that building with a newly constructed building?

2. Is it relevant to the answer to that question whether it is the vendor or the purchaser of the building who has given the order for demolition and is charged the cost thereof, and thus the supply is taxed only if the vendor has given the order for demolition and is charged the cost thereof?

3. Is it relevant to the answer to the first question whether it is the vendor or the purchaser of the building who has drawn up the plans for the new building, and thus the supply is taxed only if the vendor has drawn up the plans for the new building?

4. If the answer to the first question is in the affirmative, is tax then levied on any supply occurring after the date on which the demolition work actually begins or after a later date, especially the date on which the demolition has made substantial progress?

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

Action brought on 6 November 2008 — Commission of the European Communities v Republic of Austria

(Case C-477/08)

(2009/C 69/30)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk and M. Adam, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by failing to adopt, in full, the laws, regulations and administrative provisions necessary to comply with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [1], or, as the case may be, by failing to fully inform the Commission of those provisions, the Republic of Austria has failed to fulfil its obligations under that directive;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The prescribed period for implementing the directive expired on 20 October 2007.

[1] OJ 2005 L 255, p. 22.

Appeal brought on 18 November 2008 by Fornaci Laterizi Danesi SpA against the judgment delivered on 9 September 2008 in Case T-224/08 Fornaci Laterizi Danesi SpA v Commission of the European Communities

(Case C-498/08 P)

(2009/C 69/31)

Language of the case: Italian

Parties

Appellant: Fornaci Laterizi Danesi SpA (represented by: M. Salvi, L. de Nora, M. Manganiello, P. Rivetta, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— Set aside the order of 9 September 2008 of the Court of First Instance in Case T-224/08, notified by fax of 12 September 2008 and refer the case back to the Court of First Instance for judgment on the merits;

— In the alternative, in the event that the case is not referred back to the Court of First Instance, uphold the forms of order sought by the applicant at first instance;

— In any event, order the Commission to pay the costs.

Pleas in law and main arguments

Incorrect legal assumptions, incorrect reasons for judgment, incorrect application of the legal rule in question, failure to make inquiries (fifth paragraph of Article 230 EC, Article 249 EC and Article 254 EC, also in relation to Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms).

Reference for a preliminary ruling from the Naczelny Sąd Administracyjny (Republic of Poland) lodged on 28 November 2008 — Telekomunikacja Polska S.A., Warsaw, v President of the Urząd Komunikacji Elektronicznej

(Case C-522/08)

(2009/C 69/32)

Language of the case: Polish

Referring court

Naczelny Sąd Administracyjny

Parties to the main proceedings

Appellant: Telekomunikacja Polska S.A., Warsaw

Defendant: President of the Urząd Komunikacji Elektronicznej

Questions referred

1. Does Community law permit the Member States to introduce a prohibition, directed at all undertakings providing telecommunication services, on making the conclusion of a service-provision contract contingent on the purchase of another service (combined sale) and, in particular, does a measure of this kind go beyond what is necessary to attain the objectives of the directives contained in the telecommunications package (Directive 2002/19/EC of the European Parliament and of the Council of 7 March 2002 on access to, and interconnection of, electronic communications networks and associated facilities ([1]); Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services ([2]); Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services ([3]); and Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on universal service and users' rights relating to electronic communications networks and services ([4]))?

2. If the first question is answered in the affirmative, is a national regulatory authority competent, in the light of Community law, to monitor compliance with the prohibition laid down in Article 57(1)(1) of the Ustawa — Prawo Telekomunikacyjne (Polish Law on Telecommunications) of 16 July 2004 (*Dziennik Ustaw* No 171, item 1800, as amended)?

([1]) OJ L 108, 24.4.2002, pp. 7-20.
([2]) OJ L 108, 24.4.2002, pp. 21-32.
([3]) OJ L 108, 24.4.2002, pp. 33-50.
([4]) OJ L 108, 24.4.2002, pp. 51-77.

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 4 December 2008 — Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co KG v 'Österreich'-Zeitungsverlag GmbH

(Case C-540/08)

(2009/C 69/33)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Mediaprint Zeitungs- und Zeitschriftenverlag GmbH & Co KG

Defendant:'Österreich'-Zeitungsverlag GmbH

Questions referred

1. Do Articles 3(1) and 5(5) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council (Unfair Commercial Practices Directive) ([1]) or other provisions of that Directive preclude a national provision which makes it illegal to announce, offer or give bonuses, free of charge, with periodicals and newspapers, and to announce bonuses, free of charge, with other goods or services, apart from exhaustively specified exceptions, without it being necessary in any particular case to consider whether such a commercial practice is misleading, aggressive or otherwise unfair, even where that provision serves not only to protect consumers, but also serves other purposes which are not covered by the material scope of the Directive, for example, the maintenance of media diversity or the protection of weaker competitors?

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

Is the chance of taking part in a prize competition, which is acquired with the purchase of a newspaper, an unfair commercial practice within the meaning of Article 5(2) of the Unfair Commercial Practices Directive merely because that chance is, for at least some of those to whom the offer is addressed, not the only, but the decisive reason for purchasing the newspaper?

(1) OJ L 149, p. 22.

Reference for a preliminary ruling from the Finanzgericht München (Germany) lodged on 11 December 2008 — British American Tobacco (Germany) GmbH v Hauptzollamt Schweinfurt

(Case C-550/08)

(2009/C 69/34)

Language of the case: German

Referring court

Finanzgericht München

Parties to the main proceedings

Applicant: British American Tobacco (Germany) GmbH

Defendant: Hauptzollamt Schweinfurt

Questions referred

1. Must the first indent of the first subparagraph of Article 5(2) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (1) be interpreted as meaning that non-Community goods subject to excise duty which have been placed under an inward processing procedure within the terms of Article 84(1)(a) of Regulation (EEC) No 2913/92 (Customs Code) are to be deemed to be subject to duty-suspension arrangements even if they are produced, under an inward processing procedure, from goods which are not subject to excise duty only after the importation of those goods and therefore, in accordance with the 15th recital in the preamble to Directive 92/12/EEC, when they are being moved there is no need for the accompanying document referred to in Article 18(1) of Directive 92/12/EEC to be used?

2. If the first question is to be answered in the negative:

Must Article 15(4) of Directive 92/12/EEC be interpreted as meaning that proof that the consignee has taken delivery of the goods may also be provided otherwise than by means of the accompanying document referred to in Article 18 of Directive 92/12/EEC?

(1) OJ 1992 L 76, p. 1.

Appeal brought on 16 December 2008 by Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH, against the judgment of the Court of First Instance (Fifth Chamber) delivered on 15 October 2008 in Case T-405/05 Powerserv Personalservice GmbH v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-553/08 P)

(2009/C 69/35)

Language of the case: German

Parties

Appellant: Powerserv Personalservice GmbH, formerly Manpower Personalservice GmbH (represented by: B. Kuchar, Rechtsanwältin)

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

Form of order sought

— Set aside the judgment under appeal of the Court of First Instance of 15 October 2008 in Case T-405/05 and declare Community trade mark No 76059 invalid in respect of all goods and services;

— set aside the judgment under appeal of the Court of First Instance of 15 October 2008 in Case T-405/05 inasmuch as it relates to the failure to prove the acquired distinctive character of Community trade mark No 76059, and refer the case back to the Court of First Instance;

— in any event, order OHIM and the proprietor of the Community trade mark to bear their own costs and to pay the appellant's costs as regards the proceedings before the Board of Appeal of OHIM, the Court of First Instance and the Court of Justice.

Pleas in law and main arguments

This appeal is brought against the judgment of the Court of First Instance dismissing the appellant's action for annulment of the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market ('OHIM') of 22 July 2005 relating to a declaration of invalidity of the Community trade mark 'MANPOWER'. The Court of First Instance decided that the Community trade mark 'MANPOWER' is descriptive of the designated goods and services only in the United Kingdom, Ireland, Germany and Austria and supports the decision of the Board of Appeal that the mark in question has acquired distinctive character through use in those Member States in which it is descriptive.

The grounds of appeal relied upon are the infringement of Article 51(1)(a) and Article 51(2) in conjunction with Article 7 (1)(c) and Article 7(3) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Contrary to the view taken by the Court of First Instance, the 'MANPOWER' sign is, as the Board of Appeal of OHIM correctly determined, descriptive also in the Netherlands, Sweden, Denmark and Finland, as well as in all other Member States belonging to the Community before 1 May 2004. If the Court had acknowledged the fact that, according to European Commission figures, 47 % of relevant persons in the Community speak English, it would have had to conclude that the word mark 'MANPOWER' is descriptive not only in Germany and Austria but also in other EU States, in particular in the Netherlands, Sweden, Finland and Denmark. In respect of the other States belonging to the Community before 1 May 2004 also, the Court failed to recognise that, as a result of compulsory education in each of those Member States, the relevant section of the population has sufficient knowledge of English to be able to comprehend the meaning of basic vocabulary, such as the words 'MAN' and 'POWER', and thus also to recognise that the word 'MANPOWER' is descriptive of the goods and services of the trade mark proprietor. However, not only does the Court fail to give any reasons for declining to attribute even a basic knowledge of the English language to people outside the United Kingdom and Ireland, but it even contradicts its own case-law to date, according to which the population outside the United Kingdom and Ireland is acknowledged to have a certain basic knowledge of the English language in connection with the perception of a mark.

In connection with proof of distinctive character acquired through use, the Court erred in law in so far as it extended the relevant public by comparison with the decision of the Board of Appeal without reassessing the evidence submitted in respect of distinctive character acquired. Even if the Court is deemed to have decided correctly that proof of reputation was required to be submitted only in relation to the United Kingdom, Ireland, Germany and Austria, it should, in view of the extended public, have annulled the decision of the Board of Appeal in that respect and referred the case back to the Board of Appeal. The Court also erred in law in confirming the Board of Appeal's view regarding a spillover effect from the United Kingdom to Ireland so far as concerns any reputation of the mark at issue, even though no assumption can be made as to the spillover of the reputation of a mark from one Member State to another or from one product or service to another.

Reference for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 19 December 2008 — Müller Fleisch GmbH v Land Baden-Württemberg

(Case C-562/08)

(2009/C 69/36)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant: Müller Fleisch GmbH

Defendant: Land Baden-Württemberg

Interested party: Vertreter des Bundesinteresses beim Bundesverwaltungsgericht

Question referred

Is Article 6(1) of, in conjunction with Annex III, Chapter A, Part I to, Regulation (EC) No 999/2001 [1], as amended by Commission Regulation (EC) No 1248/2001 [2] of 22 June 2001, to be interpreted as precluding the expansion of mandatory testing to all bovine animals over 24 months of age, as established by the BSE-Untersuchungsverordnung (German Regulation on BSE testing) of 1 December 2000 (BGBl I, p. 1659), amended by the Regulation of 25 January 2001 (BGBl I, p. 164)?

[1] Regulation (EC) No 999/2001 of the European Parliament and of the Council of 22 May 2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies (OJ 2001 L 147, p. 1).

[2] Commission Regulation (EC) No 1248/2001 of 22 June 2001 amending Annexes III, X and XI to Regulation (EC) No 999/2001 of the European Parliament and of the Council as regards epidemiosurveillance and testing of transmissible spongiform encephalopathies (OJ 2001 L 173, p. 12).

Reference for a preliminary ruling from the Juzgado Contencioso-Administrativo de Granada (Spain) lodged on 18 December 2008 — Carlos Sáez Sánchez and Patricia Rueda Vargas v Junta de Andalucía and Manuel Jalón Morente and Others, co-defendants

(Case C-563/08)

(2009/C 69/37)

Language of the case: Spanish

Referring court

Juzgado Contencioso-Administrativo de Granada

Parties to the main proceedings

Applicants: Carlos Sáez Sánchez and Patricia Rueda Vargas

Defendants: Junta de Andalucía and Manuel Jalón Morente and Others

Question referred

Are Articles 2.3 and 2.4 of State Law 16/1997 of 25 April on pharmaceutical services, in so far as they define territorial and demographic limits on the opening of pharmacies, contrary to Article 43 of the Treaty establishing the European Economic Community, in that they constitute a disproportionate, even counterproductive, system for limiting the number of pharmacies, in terms of the objective of the proper provision of medicines in the relevant territory?

Appeal brought on 18 December 2008 by SGL Carbon AG against the judgment of the Court of First Instance (Fifth Chamber) delivered on 8 October 2008 in Case T-68/04 SGL Carbon AG v Commission of the European Communities

(Case C-564/08 P)

(2009/C 69/38)

Language of the case: German

Parties

Appellant: SGL Carbon AG (represented by: M. Klusmann and K. Beckmann, Rechtsanwälte)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— set aside the judgment of the Court of First Instance of the European Communities (Fifth Chamber) of 8 October 2008 in Case T-68/04 *SGL Carbon AG* v *Commission*;

— reduce, as appropriate, the amount of the fine imposed on the appellant in Article 2 of the contested Commission decision of 3 December 2003;

— in the alternative, refer the case back to the Court of First Instance for a fresh decision;

— order the respondent to pay the costs.

Grounds of appeal and main arguments

The subject-matter of this appeal is the judgment of the Court of First Instance, which dismissed the appellant's action against Commission Decision 2004/420/EC of 3 December 2003 relating to a cartel on the market for electrical and mechanical carbon and graphite products.

The appellant relies on two grounds in support of its appeal, alleging that the Court of First Instance infringed Community law and made a procedural error.

By its first ground of appeal the appellant submits that the Court of First Instance erred in law by failing to have regard to its submission at first instance that turnover which was internal to the group of affiliated companies had wrongly been included in the market volumes used to establish the amounts on which the fine was based. It also submits that the substantively excessive nature of the amount on which the fine established in respect of the appellant was based is an infringement of the principle of non-discrimination and the principle of proportionality as well as an infringement of Article 253 EC.

By its second ground of appeal, the appellant submits that the Court of First Instance made an error of assessment, and exceeded the scope of its discretion, in establishing the amount on which the appellant's fine was based. The Court of First Instance thus also infringed the principle of non-discrimination and the principle of proportionality. It is submitted that the Court of First Instance departed, without any legal basis, from its own case-law, to the detriment of the appellant, as regards the issue of the permissibility of a flat-rate for fines according to market share categories. Whereas the Court of First Instance had regarded market share categories or 'portions' with a margin of fluctuation of 5 % as appropriate in similar earlier judgments, it based its decision in the present case on market share categories of 10 %, to the significant detriment of the appellant as an undertaking which is grouped at the bottom end of its category.

Reference for a preliminary ruling from the Rechtbank Assen (Netherlands) lodged on 22 December 2008 — 1. Combinatie Spijker Infrabouw/De Jonge Konstruktie; 2. Van Spijker Infrabouw B.V.; 3. De Jonge Konstruktie B.V. v Provincie Drenthe

(Case C-568/08)

(2009/C 69/39)

Language of the case: Dutch

Referring court

Rechtbank Assen

Parties to the main proceedings

Applicants:

1. Combinatie Spijker Infrabouw/De Jonge Konstruktie

2. Van Spijker Infrabouw B.V.

3. De Jonge Konstruktie B.V.

Defendant: Provincie Drenthe

Questions referred

1 (a) Must Article 1(1) and (3) and Article 2(1) and (6) of Directive 89/665/EEC [1] be interpreted as meaning that they have not been complied with if the legal protection to be afforded by national courts in disputes relating to tendering procedures governed by European law is impeded by the fact that conflicting decisions may arise under a system in which both administrative courts and civil courts may have jurisdiction with respect to the same decision and its consequences?

(b) Is it permissible in this context for the administrative courts to be confined to forming an opinion and ruling on the tendering decision, and if so, why and/or under what conditions?

(c) Is it permissible in this context for the Algemene wet bestuursrecht (Netherlands General Law on Administrative Law), which, as a rule, governs applications for access to the administrative courts, to exclude such applications in the case of decisions concerning the conclusion of a contract by the contracting authority with one of the tenderers, and if so, why and/or under what conditions?

(d) Is the answer to Question 2 of relevance in this context?

2 (a) Must Article 1(1) and (3) and Article 2(1) and (6) of Directive 89/665/EEC be interpreted as meaning that they have not been complied with if the only procedure for obtaining a rapid decision is characterised by the fact that it is in principle geared to a rapid mandatory measure, that lawyers have no right to exchange views, that [no] evidence is, as a rule, presented in other than written form and that statutory rules on evidence are not applicable?

(b) If not, does this also apply if the decision does not lead to the final determination of the legal situation and does not form part of a decision-making process leading to such a final decision?

(c) Does it make a difference in this context if the decision is binding only on the parties to the proceedings, even though other parties may have an interest?

3. Is it compatible with Directive 89/665/EEC for a court, in interim relief proceedings, to order the contracting public authority to take a tendering decision which is subsequently deemed, in proceedings on the substance, to be contrary to tendering rules under European law?

4. (a) If the answer to the previous question is in the negative, must the contracting public authority be deemed liable in that regard, and if so, in what sense?

(b) Does the same apply if the answer to that question is in the affirmative?

(c) If that authority is required to pay damages, does Community law set criteria for determining and estimating those damages, and if so, what are they?

(d) If the contracting public authority cannot be deemed liable, is it possible, under Community law, for some other person to be shown to be liable, and on what basis?

5. If it in fact appears to be impossible, or extremely difficult, under national law and/or with the aid of the answers to the above questions to attribute liability, what must the national court do?

[1] Council Directive 89/665/EEC of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts (OJ 1989 L 395, p. 33).

Reference for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 22 December 2008 — Internetportal und Marketing GmbH v Richard Schlicht

(Case C-569/08)

(2009/C 69/40)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Applicant: Internetportal und Marketing GmbH

Defendant: Richard Schlicht

Questions referred

1. Is Article 21(1)(a) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration ([1]) to be interpreted as meaning that a right within the meaning of that provision exists,

   (a) if, without any intention to use it for goods or services, a trade mark is acquired only for the purpose of being able to register in the first phase of phased registration a domain corresponding to a German-language generic term?

   (b) if the trade mark underlying the domain registration and coinciding with a German-language generic term deviates from the domain in so far as the trade mark contains special characters which were eliminated from the domain name although the special characters were capable of being rewritten and their elimination has the effect that the domain differs from the trade mark in a way which excludes any likelihood of confusion?

2. Is Article 21(1)(a) of Regulation (EC) No 874/2004 to be interpreted as meaning that a legitimate interest exists only in the cases mentioned in Article 21(2)(a) to (c)?

If that question is answered in the negative:

3. Does a legitimate interest within the meaning of Article 21(1)(a) of Regulation (EC) No 874/2004 exist if the domain holder intends to use the domain — coinciding with a German-language generic term — for a thematic internet portal?

If questions (1) and (3) are answered in the affirmative:

4. Is Article 21(3) of Regulation (EC) No 874/2004 to be interpreted as meaning that only the circumstances mentioned in subparagraphs (a) to (e) are capable of establishing bad faith within the meaning of Article 21(1)(b) of Regulation (EC) No 874/2004?

If that question is answered in the negative:

5. Does bad faith within the meaning of Article 21(1)(b) of Regulation (EC) No 874/2004 exist if a domain was registered in the first phase of phased registration on the basis of a trade mark, coinciding with a German-language generic term, which the domain holder acquired only for the purpose of being able to register the domain in the first phase of phased registration and thereby to pre-empt other interested parties, including the holders of rights to the mark?

([1]) OJ 2004 L 162, p. 40.

Action brought on 29 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-582/08)

(2009/C 69/41)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: R. Lyal, M. Afonso, Agents)

Defendant: United Kingdom of Great Britain and Northern Ireland

The applicant claims that the Court should:

— declare that by denying recovery of input tax in respect of certain transactions carried out by taxable persons not established in the territory of the European Community, the United Kingdom has failed to comply with its obligations under Articles 169, 170 and 171 of Council Directive 2006/112/EC ([1]) of 28 November 2006 on the common system of value added tax and with Article 2(1) of the Thirteenth VAT Directive 86/560/EEC ([2]) of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes — Arrangements for the refund of value added tax to taxable persons not established in Community territory;

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

Pleas in law and main arguments

The Commission submits that Article 2(1) of the Thirteenth VAT Directive cannot be interpreted as excluding the refund of VAT charged on goods or services used for the purposes of the insurance and financial transactions mentioned in Article 17(3)(c) of the Sixth VAT directive ([3]). The Commission therefore takes the view that the United Kingdom legislation, in so far as it denies the right to a refund of that VAT to taxable persons not established in the territory of the European Community, is in breach of Community law.

([1]) OJ L 347, p. 1.
([2]) OJ L 326, p. 40.
([3]) OJ L 145, p. 1. Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment.

Reference for a preliminary ruling from the Conseil d'État (France) lodged on 2 January 2009 — Centre d'Exportation du Livre Français (CELF), Ministre de la Culture et de la Communication v Société Internationale de Diffusion et d'Édition

(Case C-1/09)

(2009/C 69/42)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellants: Centre d'Exportation du Livre Français (CELF), Ministre de la Culture et de la Communication

Respondent: Société Internationale de Diffusion et d'Édition

Questions referred

1. May the national court stay proceedings concerning the obligation to recover State aid until the Commission of the European Communities has ruled, by way of a final decision, on the compatibility of the aid with the rules of the common market, where a first decision of the Commission declaring that aid to be compatible has been annulled by the Community judicature?
2. Where the Commission has on three occasions declared the aid to be compatible with the common market, before those decisions were annulled by the Court of First Instance of the European Communities, is such a situation capable of being an exceptional circumstance which may lead the national court to limit the obligation to recover the aid?

Action brought on 9 January 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-6/09)

(2009/C 69/43)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: V. Peere and P. Dejmek, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing [1] or, in any case, by not communicating all of them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The deadline for transposition of Directive 2005/60/EC expired on 15 December 2007. When this action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any case, had not communicated them to the Commission.

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[1] OJ 2005 L 309, p. 15.

Action brought on 9 January 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-7/09)

(2009/C 69/44)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and J. Sénéchal, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/86/EC of 24 October 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards traceability requirements, notification of serious adverse reactions and events and certain technical requirements for the coding, processing, preservation, storage and distribution of human tissues and cells [1] or, in any case, by not communicating them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The deadline for transposition of Directive 2006/86/EC, with the exception of Article 10, expired on 1 September 2007. When this action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any case, had not communicated them to the Commission.

([1]) OJ 2006 L 294, p. 32.

Action brought on 9 January 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-8/09)

(2009/C 69/45)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and J. Sénéchal, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Commission Directive 2006/17/EC of 8 February 2006 implementing Directive 2004/23/EC of the European Parliament and of the Council as regards certain technical requirements for the donation, procurement and testing of human tissues and cells ([1]) or, in any case, by not communicating them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The deadline for transposition of Directive 2006/17/EC expired on 1 November 2006. When this action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any case, had not communicated them to the Commission.

([1]) OJ 2006 L 38, p. 40.

Action brought on 9 January 2009 — Commission of the European Communities v Kingdom of Belgium

(Case C-9/09)

(2009/C 69/46)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: C. Cattabriga and J. Sénéchal, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by not adopting all the laws, regulations and administrative provisions necessary to comply with Directive 2004/23/EC of the European Parliament and of the Council of 31 March 2004 on setting standards of quality and safety for the donation, procurement, testing, processing, preservation, storage and distribution of human tissues and cells ([1]) or, in any case, by not communicating them to the Commission, the Kingdom of Belgium has failed to fulfil its obligations under that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The deadline for transposition of Directive 2004/23/EC expired on 7 April 2006. When this action was brought, the defendant had not yet adopted all the measures necessary to transpose the directive or, in any case, had not communicated them to the Commission.

([1]) OJ 2004 L 102, p. 48.

Action brought on 12 January 2009 — Commission of the European Communities v Czech Republic

(Case C-15/09)

(2009/C 69/47)

Language of the case: Czech

Parties

Applicant: Commission of the European Communities (represented by: M. van Beck and L. Jelínek, acting as Agents)

Defendant: Czech Republic

Form of order sought

— declare that by not taking all necessary legal and administrative measures to comply with Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, or in any event by not communicating those measures to the Commission ([1]), the Czech Republic has failed to fulfil its obligations under Article 17 of that directive;

— order the Czech Republic to pay the costs.

Pleas in law and main arguments

The prescribed period for the transposition of the directive into domestic law expired on 21 December 2007.

([1]) OJ L 373, p. 37.

Action brought on 14 January 2009 — Commission of the European Communities v Federal Republic of Germany

(Case C-17/09)

(2009/C 69/48)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: B. Schima and C. Zadra, acting as Agents)

Defendant: Federal Republic of Germany

Form of order sought

— declare that, the Federal Republic of Germany has failed to fulfil its obligations under Article 8, in conjunction with Titles III to VI, of Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts ([1]), by reason of the fact that the city of Bonn and the Müllverwertungsanlage Bonn GmbH awarded a public service contract for the disposal of bio-waste and green waste without carrying out an award procedure including Europe-wide tendering;

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

Pleas in law and main arguments

The subject-matter of the present action is a service contract for pecuniary interest for the disposal of bio-waste and green waste between the City of Bonn and the Müllverwertungsanlage Bonn GmbH ('MVA GmbH'), on the one hand, and the private waste disposal undertaking EVB Entsorgung und Verwertung Bonn GmbH & Co. KG ('EVB') on the other hand. MVA GmbH is a municipal company, 93.46 % of the capital of which is held by Stadtwerke Bonn GmbH — a 100 % subsidiary of the City of Bonn — and 6.54 % of the capital of which is held directly by the City of Bonn. In that contract EVB undertakes, first, to procure, pre-sort and deliver household waste for disposal at the waste treatment plant, Bonn, and, secondly, to dispose of bio-waste and green waste from the urban area of Bonn in their compost plants for a price of DM 6 million per annum.

Although the disposal contract in question is a public service contract within the meaning of Article 1(a) of Directive 92/50/EEC, it was concluded directly with EVB without the carrying-out of a formal award procedure and Europe-wide tendering. The contract also deals with the provision of refuse disposal services for the purposes of category No 16 of Annex I A to that directive and thus significantly exceeds the threshold value for the application of the directive.

Contrary to the opinion of the Federal Government, what matters is not whether the contract covers services other than the composting services, which are provided by the City or MVA GmbH on EVB's behalf. The crucial factor is, rather, that the contract creates legally binding obligations on the part of EVB to the City in respect of the provision of composting services for pecuniary interest. Furthermore, it cannot be maintained that the composting services constitute a completely insignificant ancillary aspect of the contract because those services are one of the central aspects of the concept negotiated by the parties and constitute a significant economic part of the mutually agreed volume of services.

In addition, the Commission cannot agree with the Federal Government's argument that the City of Bonn was entitled, on the basis of Article 11(3)(b) of Directive 92/50/EEC, to award the composting services by negotiated procedure without prior publication of a contract notice. According to the case-law of the Court that provision of the Directive must be interpreted strictly and the burden of proving the existence of the exceptional circumstances justifying a derogation lies on the person seeking to rely on those circumstances. Since the Federal Government has not produced detailed evidence to prove that EVB had an exclusive right to provide the disputed composting services and what the legal basis for such a right is, it cannot be assumed that there are circumstances justifying the derogation in Article 11(3)(b) of Directive 92/50/EEC.

([1]) OJ 1992 L 209, p. 1.

Action brought on 14 January 2009 — Commission of the European Communities v Kingdom of Spain

(Case C-18/09)

(2009/C 69/49)

Language of the case: Spanish

Parties

Applicant: Commission of the European Communities (represented by: K. Simonsson and L. Lozano Palacios, acting as Agents)

Defendant: Kingdom of Spain

Form of order sought

— declare that, by maintaining in force Ley 48/2003, de 26 noviembre, de regimen económico y de prestación de servicios de los puertos de interés general (Law 48/2003 of 26 November 2003 on the economic rules and supply of services for ports of general interest) and, in particular Article 24(5) and Article 27(1), (2) and (4) thereof, which establish a system of rebates and exemptions for harbour dues, the Kingdom of Spain has failed to fulfil its obligations under Community Law [1] and, in particular, Article 1 of Council Regulation (EEC) No 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;

— order Kingdom of Spain to pay the costs.

Pleas in law and main arguments

Spanish law provides for a series of exemptions and rebates relating to harbour dues. Those exemptions and rebates depend on the ports of departure or destination of the vessels and have the consequence that more favourable tariffs are applied, first, to traffic between the Spanish archipelagos and Ceuta and Melilla and, second, to traffic between those ports and ports of the European Union and, third, between ports of the European Union. The Commission takes the view that that legislation is discriminatory.

The Kingdom of Spain, which invoked the particular geographic situation of the ports concerned, has not justified either the need for or the proportionality of that measure. Despite having promised to amend the legislation at issue, as far as the Commission is aware, no legislation has been adopted to put an end to the infringement.

[1] OJ L 378, p. 1.

Reference for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 19 January 2009 — Djurgården-Lilla Värtans Miljöskyddsförening v AB Fortum Värme samägt med Stockholms stad

(Case C-24/09)

(2009/C 69/50)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: Djurgården-Lilla Värtans Miljöskyddsförening

Defendant: AB Fortum Värme samägt med Stockholms stad

Questions referred

1. Does the provision in Article 10a of Directive 85/337 [1] — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is also a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?

2. If the answer to Question 1 is affirmative: Are Articles 1(2), 6(4) and 10a of Directive 85/337 to be interpreted as meaning that different national requirements can be laid down with regard to the public concerned referred to in Articles 6(4), on the one hand, and 10a, on the other, with the result that a locally established environmental protection association which has a right to participate in the decision-making procedures referred to in Article 6(4) in respect of projects which may have significant effects on the environment in the area where the association is active does not — since it has fewer members than the minimum number laid down in national law — have a right of appeal such as is referred to in Article 10a of Directive 85/337?

3. Does the provision in Article 15a of Directive 96/61 [2] — that under certain circumstances the public concerned is to have access to a review procedure before a court of law or another independent and impartial body established by law to challenge the substantive or procedural legality of a decision — imply that there is a requirement that the public concerned is to be entitled to challenge a decision of a court in planning consent proceedings in a case where the public concerned has had the opportunity of participating in the court's examination of the question of planning consent and of submitting its views to that court?

4. If the answer to Question 3 is affirmative: Are Articles 2(14) and 15a of Directive 96/61 to be interpreted as meaning that national requirements can be laid down with regard to the right to judicial review, with the result that a locally established environmental protection association which has a right to participate in the decision-making procedures in respect of projects which may have significant effects on the environment in the area where the association is active does not — since it has fewer members than the minimum number laid down in national law — have a right of appeal such as is referred to in Article 15a of Directive 96/61?

(1) Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).
(2) Council Directive 96/61/EC of 24 September 1996 concerning integrated pollution prevention and control (OJ 1996 L 257, p. 26).

Action brought on 21 January 2009 — Commission of the European Communities v Republic of Austria

(Case C-28/09)

(2009/C 69/51)

Language of the case: German

Parties

Applicant: Commission of the European Communities (represented by: P. Oliver, A. Alcover San Pedro and B. Schima, acting as Agents)

Defendant: Republic of Austria

Form of order sought

— declare that, by prohibiting lorries with a total weight of more than 7.5 tonnes, carrying certain goods, from being driven on a section of the A12 motorway, the Republic of Austria has failed to fulfil its obligations under Articles 28 EC and 29 EC;

— order the Republic of Austria to pay the costs.

Pleas in law and main arguments

The adoption of a sectoral prohibition against driving lorries with a total weight of more than 7.5 tonnes, loaded with certain goods, on the A12 motorway must be regarded as constituting a measure having equivalent effect to a quantitative restriction and is thus incompatible with Articles 28 EC and 29 EC. The disputed measure is neither appropriate nor necessary to achieve the improvement in air quality on the A12 required by Community law as it is not properly focused and does not take less restrictive measures, such as, for instance, permanent speed restrictions or emissions-dependent prohibitions on driving, into consideration. Furthermore, the defendant has not proved that there is a suitable alterative to road transport.

Action brought on 30 January 2009 — Commission of the European Communities v Italian Republic

(Case C-42/09)

(2009/C 69/52)

Language of the case: Italian

Parties

Applicant: Commission of the European Communities (represented by: L. Lozano Palacios and E. Vesco, acting as Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2005/45/EC (1) of the European Parliament and of the Council of 7 September 2005 on the mutual recognition of seafarers' certificates issued by the Member States and amending Directive 2001/25/EC and, in any event, by failing to notify the Commission thereof, the Italian Republic has failed to fulfil its obligations under Article 5 of that directive.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The period prescribed for transposition of Directive 2005/45/EC expired on 20 October 2007.

([1]) OJ 2005 L 255, p. 160.

Appeal brought on 29 January 2009 by the Hellenic Republic against the judgment delivered by the Court of First Instance (Eighth Chamber) on 19 November 2008 in Case T-404/05 Hellenic Republic v Commission of the European Communities

(Case C-43/09 P)

(2009/C 69/53)

Language of the case: Greek

Parties

Appellant: Hellenic Republic (represented by: Kharalampos Meidanis and M. Tassopoulou)

Other party to the proceedings: Commission of the European Communities

Form of order sought

— hold the present appeal admissible and well founded;

— set aside in its entirety the judgment of the Court of First Instance of 19 November 2008 in Case T-404/05 *Hellenic Republic* v *Commission of the European Communities* which constitutes the subject of the present appeal;

— order the opposing party to pay all the costs.

Grounds of appeal and main arguments

By the judgment of 19 November 2008, the setting aside of which is sought in the present appeal, the Court of First Instance dismissed the action in its entirety.

The Hellenic Republic puts forward three grounds in support of its appeal against that judgment.

It submits in its first ground of appeal that the Court of First Instance misinterpreted and misapplied Community law with regard to the Commission's power *ratione temporis* to impose the particular financial correction, and that its judgment contains contradictory reasoning.

The second ground is based on the submission that the Court of First Instance misinterpreted and misapplied Community law as regards infringement of the principle of non-retroactivity in connection with failure to comply with publicity measures, and that its judgment contains contradictory reasoning in this regard.

The third ground is based on the submission that the Court of First Instance infringed the Community law principle of proportionality.

Action brought on 30 January 2009 — Commission of the European Communities v Hellenic Republic

(Case C-44/09)

(2009/C 69/54)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. van Beek and M. Karanasou-Apostolopoulou)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/113/EC ([1]) of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2004/113/EC into domestic law expired on 21 December 2007.

([1]) OJ L 373 of 21.12.2004, p. 37.

Order of the President of the Court of 2 October 2008 — Commission of the European Communities v Hellenic Republic

(Case C-112/06) ([1])

(2009/C 69/55)

Language of the case: Greek

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

([1]) OJ C 121, 20.5.2006.

Order of the President of the Court of 25 November 2008 (reference for a preliminary ruling from the Tribunal de commerce de Charleroi — Belgium) — SA Sporting du Pays de Charleroi, G-14 Groupement des clubs de football européens v Fédération Internationale de Football Association (FIFA)

(Case C-243/06) ([1])

(2009/C 69/56)

Language of the case: French

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

([1]) OJ C 212, 2.9.2006.

Order of the President of the Third Chamber of the Court of 1 December 2008 (reference for a preliminary ruling from the Tribunale Amministrativo Regionale del Lazio — Italy) — CEPAV DUE — Consorzio ENI per l'Alta Velocità, Consorzio COCIV, Consorzio IRICAV DUE v Office of the President of the Council of Ministers, Ministry of Transport and Others

(Case C-351/07) ([1])

(2009/C 69/57)

Language of the case: Italian

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

([1]) OJ C 247, 20.10.2007.

Order of the President of the Court of 17 December 2008 — European Parliament v Commission of the European Communities

(Case C-474/07) ([1])

(2009/C 69/58)

Language of the case: English

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

([1]) OJ C 297, 8.12.2007.

Order of the President of the Court of 22 October 2008 — Commission of the European Communities v Hellenic Republic

(Case C-494/07) ([1])

(2009/C 69/59)

Language of the case: Greek

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

([1]) OJ C 8, 12.1.2008.

Order of the President of the Seventh Chamber of the Court of 14 November 2008 — Commission of the European Communities v Hellenic Republic

(Case C-541/07) ([1])

(2009/C 69/60)

Language of the case: Greek

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

([1]) OJ C 22, 26.1.2008.

Order of the President of the Seventh Chamber of the Court of 22 December 2008 — Commission of the European Communities v Hellenic Republic

(Case C-548/07) ([1])

(2009/C 69/61)

Language of the case: Greek

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

([1]) OJ C 22, 26.1.2008.

Order of the President of the Court of 9 September 2008 — Commission of the European Communities v Republic of Portugal

(Case C-24/08) ([1])

(2009/C 69/62)

Language of the case: Portuguese

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

([1]) OJ C 79, 29.3.2008.

Order of the President of the Court of 4 November 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-26/08) ([1])

(2009/C 69/63)

Language of the case: German

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

([1]) OJ C 92, 12.4.2008.

Order of the President of the Court of 27 November 2008 — Commission of the European Communities v Ireland

(Case C-48/08) ([1])

(2009/C 69/64)

Language of the case: English

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

([1]) OJ C 92, 12.4.2008.

Order of the President of the Court of 10 November 2008 — Commission of the European Communities v Hellenic Republic

(Case C-82/08) ([1])

(2009/C 69/65)

Language of the case: Greek

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

([1]) OJ C 92, 12.4.2008.

Order of the President of the Court of 5 November 2008 — Commission of the European Communities v Republic of Austria

(Case C-107/08) ([1])

(2009/C 69/66)

Language of the case: German

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

([1]) OJ C 107, 26.4.2008.

Order of the President of the Sixth Chamber of the Court of 17 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-122/08) ([1])

(2009/C 69/67)

Language of the case: English

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

([1]) OJ C 116, 9.5.2008.

Order of the President of the Court of 22 October 2008 — Commission of the European Communities v Hellenic Republic

(Case C-130/08) ([1])

(2009/C 69/68)

Language of the case: Greek

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

([1]) OJ C 128, 24.5.2008.

Order of the President of the Sixth Chamber of the Court of 18 December 2008 — Commission of the European Communities v Republic of Poland

(Case C-142/08) ([1])

(2009/C 69/69)

Language of the case: Polish

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

([1]) OJ C 142, 7.6.2008.

Order of the President of the Court of 7 January 2009 (reference for a preliminary ruling from the Juzgado de lo Mercantil nº 1 de Málaga — Spain) — Finn Mejnertsen v Betina Mandal Barsoe

(Case C-148/08) ([1])

(2009/C 69/70)

Language of the case: Spanish

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

([1]) OJ C 142, 7.6.2008.

Order of the President of the Court of 3 December 2008 — Commission of the European Communities v Republic of Austria

(Case C-181/08) ([1])

(2009/C 69/71)

Language of the case: German

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

([1]) OJ C 158, 21.6.2008.

Order of the President of the Court of 3 December 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-187/08) ([1])

(2009/C 69/72)

Language of the case: French

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

([1]) OJ C 158, 21.6.2008.

Order of the President of the Court of 25 November 2008 — Commission of the European Communities v Kingdom of the Netherlands

(Case C-190/08) ([1])

(2009/C 69/73)

Language of the case: Dutch

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

([1]) OJ C 171, 5.7.2008.

Order of the President of the Court of 5 November 2008 — Commission of the European Communities v Portuguese Republic

(Case C-191/08) ([1])

(2009/C 69/74)

Language of the case: Portuguese

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

([1]) OJ C 171, 5.7.2008.

Order of the President of the Court of 23 December 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-209/08) ([1])

(2009/C 69/75)

Language of the case: French

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

([1]) OJ C 171, 5.7.2008.

Order of the President of the Court of 18 November 2008 — Commission of the European Communities v Italian Republic

(Case C-218/08) ([1])

(2009/C 69/76)

Language of the case: Italian

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

([1]) OJ C 197, 2.8.2008.

Order of the President of the Court of 26 November 2008 — Commission of the European Communities v Hellenic Republic

(Case C-220/08) ([1])

(2009/C 69/77)

Language of the case: Greek

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

([1]) OJ C 183, 19.7.2008.

Order of the President of the Court of 23 December 2008 — Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland

(Case C-367/08) ([1])

(2009/C 69/78)

Language of the case: English

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

([1]) OJ C 260, 11.10.2008.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 10 February 2009 — Deutsche Post and DHL International v Commission

(Case T-388/03) ([1])

(State aid — Decision not to raise objections — Action for annulment — Standing to bring proceedings — Admissibility — Serious difficulties)

(2009/C 69/79)

Language of the case: German

Parties

Applicant: Deutsche Post AG (Bonn, Germany) and DHL International (Diegem, Belgium) (represented by: J. Sedemund and T. Lübbig, lawyers)

Defendant: Commission of the European Communities (represented by: V. Kreuschitz and M. Niejahr, Agents)

Re:

Annulment of Commission Decision C(2003) 2508 final of 23 July 2003 raising no objections, following the preliminary examination procedure provided for in Article 88(3) EC, to various measures adopted by the Belgian authorities in favour of La Poste SA, the Belgian public postal undertaking.

Operative part of the judgment

The Court:

1. *Annuls Commission Decision C(2003) 2508 final of 23 July 2003 raising no objections, following the preliminary examination procedure provided for in Article 88(3) EC, to various measures adopted by the Belgian authorities in favour of La Poste SA, the Belgian public postal undertaking;*

2. *Orders the Commission to bear its own costs and to pay those incurred by Deutsche Post AG and DHL International.*

([1]) OJ C 35, 7.2.2004.

Judgment of the Court of First Instance of 28 January 2009 — Centro Studi Manieri v Council

(Case T-125/06) ([1])

(Public service contracts — Tendering procedure for full crèche management — Decision to have recourse to the services of the Office for Infrastructure and Logistics (OIB) and to abandon a tendering procedure)

(2009/C 69/80)

Language of the case: Italian

Parties

Applicant: Centro Studi Antonio Manieri Srl (Rome, Italy) (represented by: C. Forte, M. Forte and G. Forte, lawyers)

Defendant: Council of the European Union (represented by: A. Vitro, P. Mahnič and M. Balta, acting as Agents)

Re:

Application, first, for annulment of the decision of the Council, made public by letter of its General Secretariat of 16 January 2006, abandoning the tendering procedure 2003/S 209-187862 for the full management of a crèche; second, for annulment of the decision to accept the proposal of the Office for Infrastructure and Logistics (OIB) for the management of those services; and, third, for damages.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Centro Studi Antonio Manieri Srl to pay its own costs as well as the costs incurred by the Council.*

([1]) OJ C 131, 3.6.2006.

Judgment of the Court of First Instance of 4 February 2009 — Omya v Commission

(Case T-145/06) ([1])

(Competition — Concentrations — Request for information — Article 11(3) of Regulation (EC) No 139/2004 — Need for the information requested — Proportionality — Reasonable time — Misuse of powers — Breach of the principle of legitimate expectation)

(2009/C 69/81)

Language of the case: English

Parties

Applicant: Omya AG (Oftringen, Switzerland) (represented by: C. Ahlborn, C. Berg, Solicitors, C. Pinto Correia, lawyer, and J. Flynn QC)

Defendant: Commission of the European Communities (represented initially by V. Di Bucci, X. Lewis, R. Sauer, A. Whelan and F. Amato, and subsequently by V. Di Bucci, X Lewis, R. Sauer and A. Whelan, Agents)

Re:

Application for the annulment of the Commission's decision of 8 March 2006 adopted pursuant to Article 11(3) of Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (OJ 2004 L 24, p. 1), and requesting the correction of the information communicated in the context of the examination of (Case COMP/M. 3796 Omya v J.M. Huber PCC)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Omya AG to pay the costs.*

([1]) OJ C 165, 15.7.2006.

Judgment of the Court of First Instance of 11 February 2009 — Iride and Iride Energia v Commission

(Case T-25/07) ([1])

(State aid — Energy sector — Compensation for stranded costs — Decision declaring aid compatible with the common market — Obligation for the recipient undertaking first to repay earlier aid declared unlawful — State resources — Advantage — Obligation to state reasons)

(2009/C 69/82)

Language of the case: Italian

Parties

Applicants: Iride SpA (Turin, Italy); and Iride Energia SpA (Turin) (represented by: L. Radicati di Brozolo, M. Merola and C. Bazoli, lawyers)

Defendant: Commission of the European Communities (represented by: E. Righini and G. Conte, acting as Agents)

Re:

Application for annulment of Commission Decision 2006/941/EC of 8 November 2006 on State aid C 11/06 (ex N 127/05) which Italy is planning to implement for AEM Torino (OJ 2006 L 366, p. 62), in the form of grants to reimburse the stranded costs in the energy sector, in so far as (i) it contains a finding of State aid and (ii) it makes compatibility of that aid with the common market conditional upon reimbursement by AEM Torino of earlier unlawful aid granted under the scheme for 'municipalised' undertakings.

Operative part of the judgment

The Court:

1. *Dismisses the action.*

2. *Orders Iride SpA and Iride Energia SpA to pay the costs.*

([1]) OJ C 69, 24.3.2007.

Judgment of the Court of First Instance of 28 January 2009 — Germany v Commission

(Case T-74/07) ([1])

(ERDF — Reduction of financial assistance — Change to the financing plan without the consent of the Commission — Maximum rates of financing laid down for specific measures — Concept of significant change — Article 24 of Regulation (EEC) No 4253/88 — Duty to state the reasons on which the decision is based — Action for annulment)

(2009/C 69/83)

Language of the case: German

Parties

Applicant: Federal Republic of Germany (represented by: M. Lumma and C. Blaschke, acting as Agents, assisted by C. von Donat, lawyer)

Defendant: Commission of the European Communities (represented by: G. Wilms and L. Flynn, acting as Agents)

Re:

Action for annulment of Commission Decision C(2006) 7271 final of 27 December 2006 on the reduction of the period of the financial contribution of the European Regional Development Fund (ERDF) granted to the Operational Programme under the Community initiative INTERREG II in the Saarland, Lorraine and Western Palatinate regions in Germany.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Federal Republic of Germany to pay the costs.*

([1]) OJ C 95, 28.4.2007.

Judgment of the Court of First Instance of 28 January 2009 — Volkswagen v OHIM

(Case T-174/07) ([1])

(Community trade mark — Application for Community word mark TDI — Absolute ground for refusal — Descriptive character — Lack of distinctive character acquired through use — Article 7(1)(c) and (3) of Regulation (EC) No 40/94 — Article 62(2) of Regulation (EC) No 40/94 — Article 74(1) of Regulation (EC) No 40/94)

(2009/C 69/84)

Language of the case: German

Parties

Applicant: Volkswagen AG (Wolfsburg, Germany) (represented by: S. Risthaus, H.-P. Schrammek, C. Drzymalla and R. Jepsen, lawyers)

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

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 7 March 2007 (Case R 1479/2005-1) concerning an application for registration of the word sign TDI as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Volkswagen AG to bear its own costs and to pay those of the Office for Harmonisation in the Internal Market (Trade Marks and Designs).*

([1]) OJ C 155, 7.7.2007.

Judgment of the Court of First Instance of 11 February 2009 — Bayern Innovativ v OHIM — Life Sciences Partners Perstock (LifeScience)

(Case T-413/07) ([1])

(Community trade mark — Opposition proceedings — Application for the figurative Community trade mark LifeScience — Earlier Community trade mark Life Sciences Partners — Relative ground for refusal — Likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 40/94)

(2009/C 69/85)

Language of the case: English

Parties

Applicant: Bayern Innovativ — Bayerische Gesellschaft für Innovation und Wissenstransfer mbH (Nuremberg, Germany) (represented by: A. Beschorner, B. Glaser and C. Thomas, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Life Sciences Partners Perstock NV (Amsterdam, Netherlands)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 2 August 2007 (Case R 1545/2006-1), relating to opposition proceedings between Life Sciences Partners Perstock NV and Bayern Innovativ — Bayerische Gesellschaft für Innovation und Wissenstransfer mbH.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Bayern Innovativ — Bayerische Gesellschaft für Innovation und Wissenstransfer mbH to pay the costs.*

([1]) OJ C 8, 12.1.2008.

Order of the Court of First Instance of 17 December 2008 — Fox Racing v OHIM — Lloyd IP (SHIFT)

(Case T-74/06) ([1])

(Community trade mark — No need to adjudicate)

(2009/C 69/86)

Language of the case: English

Parties

Applicant: Fox Racing, Inc. (Morgan-Hill, United States) (represented by: P. Brownlow, solicitor)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Lloyd IP Limited (Penrith, United Kingdom) (represented by: R. Elliot, solicitor)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 8 December 2005 (Case R 1180/2004-1) concerning opposition proceedings between Lloyd IP Limited and Fox Racing Inc.

Operative part of the order

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

2. *The applicant is to pay its own costs and those incurred by the defendant.*

3. *The intervener is to bear its own costs.*

([1]) OJ C 108, 6.5.2006.

Order of the President of the Court of First Instance of 15 January 2009 — Ziegler v Commission

(Case T-199/08 R)

(Interim measures — Competition — Payment of a fine — Bank guarantee — Application for stay of execution — Lack of urgency)

(2009/C 69/87)

Language of the case: French

Parties

Applicant: Ziegler SA (Brussels, Belgium) (represented by: J.-L. Lodomez and J. Lodomez, lawyers)

Defendant: Commission of the European Communities (represented initially by: A. Bouquet and O. Beynet, and subsequently by: A. Bouquet and N. von Lingen, acting as Agents)

Re:

Application for a stay of execution of Commission Decision C(2008) 926 final of 11 March 2008 on a proceeding under Article 81 [EC] and Article 53 of the EEA Agreement (Case COMP/38.543 — International Removal Services).

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Order of the Court of First Instance of 10 December 2008 — Canon Communications v OHIM — Messe Düsseldorf (MEDTEC)

(Case T-262/08) ([1])

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

(2009/C 69/88)

Language of the case: English

Parties

Applicant: Canon Communications LLC (Los Angeles, United States) (represented by: M. Mak and E. Zietse, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM intervening before the Court of First Instance: Messe Düsseldorf GmbH (Düsseldorf, Germany)

Re:

Action brought against the decision of the First Board of Appeal of OHIM of 30 April 2008 (Case R 817/2005-1) concerning opposition proceedings between Messe Düsseldorf GmbH and Canon Communications LLC.

Operative part of the order

1. *There is no need to rule on the action.*

2. *The applicant and the other party to the proceedings before the Board of Appeal of OHIM shall bear their own costs and shall each pay half of those incurred by the defendant.*

([1]) OJ C 223, 30.8.2008.

Order of the President of the Court of First Instance of 14 November 2008 — Säveltäjäin Tekijänoikeustoimisto Teosto v Commission

(Case T-401/08 R)

(Interim measures — Commission decision ordering the termination of a concerted practice concerning the collective protection of authors' rights — Application for suspension of a measure — Lack of urgency)

(2009/C 69/89)

Language of the case: Finnish

Parties

Applicant: Säveltäjäin Tekijänoikeustoimisto Teosto ry (Helsinki, Finland) (represented by: H. Pokela, lawyer)

Defendant: Commission of the European Communities (represented by: E. Paasivirta, F. Castillo de la Torre and P. Aalto, Agents)

Re:

Application for suspension of the operation of Article 3 in conjunction with Article 4(2) and (3) of Decision C(2008) 3435 final of the Commission of 16 July 2008 relating to a proceeding pursuant to Article 81 EC and Article 53 of the EEA Agreement (Case COMP/C2/38.698-CISAC), to the extent that the applicant is affected.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *The costs are reserved.*

Order of the President of the Court of First Instance of 14 November 2008 — Artisjus v Commission

(Case T-411/08 R)

(Applications for interim measures — Commission decision ordering the cessation of a concerted practice in connection with the collective management of copyright — Application for suspension of operation of a measure — No urgency)

(2009/C 69/90)

Language of the case: English

Parties

Applicant: Artisjus Magyar Szerzői Jogvédő Iroda Egyesület (Budapest, Hungary) (represented by: Z. Hegymegi-Barakonyi and P. Vörös, lawyers)

Defendant: Commission of the European Communities (represented by: F. Castillo de la Torre and V. Bottka, acting as Agents)

Re:

Application for suspension of operation of Articles 3 and 4(2) and (3) of Commission Decision C(2008) 3435 final of 16 July 2008 relating to a proceeding under Article 81 of the EC Treaty and Article 53 of the EEA Agreement (Case COMP/C2/38.698 — CISAC) in so far as they relate to the applicant.

Operative part of the order

1. *The application for interim measures is dismissed.*

2. *Costs are reserved.*

Appeal brought on 12 January 2009 by Georgi Kerelov against the judgment of the Civil Service Tribunal delivered on 29 November 2007 in Case F-19/07 Kerelov v Commission

(Case T-60/08 P)

(2009/C 69/91)

Language of the case: French

Parties

Appellant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by A. Kerelov, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Annul the judgment of the European Union Civil Service Tribunal of 29 November 2007 in Case F-19/07 *Kerelov* v *Commission*;

— admit the pleadings submitted by the appellant at first instance;

— order the respondent to pay all the costs.

Pleas in law and main arguments

By the present appeal, the appellant seeks annulment of the judgment of the Civil Service Tribunal (CST) of 29 November 2007 delivered in Case F-19/07 *Kerelov* v *Commission*, dismissing the action by which the appellant sought, on the one hand, annulment of the decisions of the selection board of open competition EPSO/AD/43/06 not to include him on the reserve list of that competition and to exclude him therefrom, and, on the other, damages in compensation for the loss allegedly suffered.

In support of his appeal, the appellant relies on ten pleas in law, alleging:

— breach of the principles governing the administrative procedure with regard to proof, since the CST reversed the burden of proof;

— breach of the principle of an adversarial process, since the CST did not give the appellant sufficient time to take a position on the new documents added to the file;

— breach of the principle of the public nature of the proceedings, since the CST did not hold a fresh hearing following the lodging of new documents;

— breach of the duty of impartiality, since the CST did not take the steps necessary to examine the file;

— an error in law, since the CST held that the selection board, not the Director of the European Personnel Selection Office (EPSO), has the power to exclude a candidate;

— an error in law, since the CST considered that prohibition on contact between competition candidates and members of the selection board ends upon publication of the reserve list in the *Official Journal of the European Union*, and not when the selection board completes its work;

— breach of the relevant principles of administrative law by confirming the decision of the selection board of 2 February 2007 to exclude the appellant from the competition, since:

  — the original version of that decision was not added to the file;

  — that decision does not contain factual grounds sufficiently precise for its addressee to be aware of the exact facts on which it was based; and

— the selection board did not invite the appellant to give an explanation for the facts on the basis of which his candidature was rejected, that is to say, the sending of two emails to the selection board;

— the need, of its own motion, to check for any other breach of the applicable rules of law which the CST may have committed.

Appeal brought on 12 January 2009 by Georgi Kerelov against the order of the Civil Service Tribunal delivered on 12 December 2007 in Case F-110/07 Kerelov v Commission

(Case T-100/08 P)

(2009/C 69/92)

Language of the case: French

Parties

Appellant: Georgi Kerelov (Pazardzhik, Bulgaria) (represented by A. Kerelov, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— Set aside the order of the Civil Service Tribunal of the European Union of 12 December 2007 in Case F-110/07 *Kerelov* v *Commission*;

— Grant the applicant the form of order sought at first instance;

— Order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

By the present appeal, the applicant is seeking annulment of the order of the Civil Service Tribunal of 12 December 2007 in Case F-110/07 *Kerelov* v *Commission* dismissing as manifestly inadmissible the action by which the applicant sought annulment of the decision of the director of the European Personnel Selection Office (EPSO) not to transmit to the applicant information and documents relating to competition EPSO/AD/46/06.

In support of his appeal, the applicant relies on several pleas in law alleging or for:

— infringement of the principle of administrative procedure inasmuch as the Tribunal considered that the initiating application did not put forward any pleas in law without ascertaining of its own motion whether the decision contested at first instance was unlawful, without limiting itself to the complaints put forward by the applicant;

— infringement of the right of due process and of the principle of the impartiality of the Tribunal, inasmuch as the Tribunal dismissed the applicant's action as manifestly inadmissible without permitting him to correct his application at a point in time when the applicant could no longer bring a new action in accordance with the rules, since the time-limit for bringing actions had expired;

— infringement of the principles of the right to be heard by a court and of the public nature of the proceedings, inasmuch as no hearing took place;

— infringement of the principle of procedural fairness inasmuch as the Tribunal did not hear the applicant on the issue of the inadmissibility of his action;

— infringement of the first paragraph of Article 21 of the Statute of the Court of Justice and Article 44(1)(c) of the Rules of Procedure of the Court of First Instance inasmuch as the Tribunal has, in reality, introduced a 'crystallisation of the contentious debate' rule by considering that the application contained no pleas in law;

— verification, of the Court's own motion, of whether the Tribunal committed any other infringements of the applicable rules of law.

Appeal brought on 29 October 2008 by Radu Duta against the judgment of the Civil Service Tribunal delivered on 4 September 2008 in Case F-103/07 Duta v Court of Justice

(Case T-475/08 P)

(2009/C 69/93)

Language of the case: French

Parties

Appellant: Radu Duta (Luxembourg, Luxembourg) (represented by F. Krieg, lawyer)

Other party to the proceedings: Court of Justice of the European Communities

Form of order sought by the appellant

— Admit the present appeal;

— declare it well founded;

— accordingly, by amendment of the judgment of the European Union Civil Service Tribunal of 4 September 2008, declare the appellant's appeal admissible and well founded;

— accordingly, on the basis of the claims set out above, annul the contested decisions;

— so far as necessary, return the matter to the competent authority for a ruling in accordance with the judgment in the appeal;

— order the respondent to pay the sum of EUR 1 100 000 (one million one hundred thousand Euros) in respect of damages and interest;

— so far as necessary, order an expert to give a report on the extent of the financial loss suffered by the appellant;

— order the respondent to pay all the costs and expenses of the case;

— authorise the appellant expressly to refer to his pleadings at first instance which are annexed to the present appeal and form an integral part thereof;

— as to the remainder, authorise the appellant expressly to reserve all his rights of actions and remedies and in particular the right to bring an action before the European Court of Human Rights.

Pleas in law and main arguments

By the present appeal, the appellant seeks the annulment of the judgment of the Civil Service Tribunal (CST) of 4 September 2008, delivered in Case F-103/07 *Duta* v *Court of Justice*, dismissing as inadmissible the action by which the appellant sought, on the one hand, annulment of the memorandum informing him that he would not be offered a post as a Legal Secretary and, on the other, damages in compensation for the loss allegedly suffered.

The appellant states that his appeal is lodged as a protective measure in order to maintain his rights before the European Court of Human Rights. He does not give precise details of the contested points in the judgment of which he seeks annulment, or the legal arguments made in specific support of that claim.

Action brought on 24 December 2008 — Syndicat des thoniers méditerranéens and Others v Commission

(Case T-574/08)

(2009/C 69/94)

Language of the case: French

Parties

Applicants: Syndicat des thoniers méditerranéens (Marseille, France), Jean-Luc Buono, Gérard Buono, Marc Carreno, Roger Louis Paul Del Ponte (Balaruc les Bains, France), Serge Antoine Di Rocco (Frontignan, France), Jean Louis Donnarel, Jean-François Flores, Jean Louis Étienne Jalabert (Sigean, France), Jean Gérald Lubrano (Marseille, France), Gérald Jean Lubrano (Balaruc les Bains, France), Jean Lubrano, Jean Lucien Lubrano, Fabrice Marin, Robert Marin, Hervé Marin, Nicolas Marin, Sébastien Marin, Jean-Marc Penniello, Serge Antoine José Perez (Sorède, France) (represented by: C. Bonnefoi, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare that the European Commission is liable in respect of the consequences of the implementation of Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea;

— Order payment of compensation commensurate with the consequences of that finding of liability; that compensation is estimated on the basis of the attached evidence and is in the process of confirmation; it is stated in EUR:

  — Buono Jean-Luc and Gérard: 323 053 or 564 956 (according to whether before or after taxation);

  — Carreno Marc: symbolic EUR 1;

  — Del Ponte Roger: 518 707 or 703 707 (according to whether before or after taxation);

  — Di Rocco Serge: 388 047 or 634 207 (according to whether before or after taxation);

  — Donnarel Jean-Louis: 351 685;

  — Flores Jean-François: symbolic EUR 1;

  — Jalabert Jean Louis Etienne: 144 643;

  — Lubrano Jean and Lubrano Jean Lucien: 212 358;

  — Lubrano Jean-Gérald: 237 160 or 474 320 (according to whether before or after taxation);

  — Lubrano Gérald: 213 588;

  — Marin Fabrice and Marin Robert: 466 665 or 610 820 (according to whether before or after taxation);

  — Marin Hervé, Marin Nicolas, Marin Robert and Marin Sébastien: symbolic EUR 1;

  — Penniello Jean-Marc: 624 000;

  — Perez Serge Antoine: 54 645;

— Order payment of compensation for non-pecuniary losses to the Syndicat des thonniers méditerranéens commensurate with the consequences of that finding of liability, that is to say, a lump sum of EUR 30 000 which will be used to provide members with information regarding Community fishing law and legislation;

— Order payment of all legal costs, fees and disbursements, details of which will be provided, arising out of the present proceedings.

Pleas in law and main arguments

The applicants, who are sea-fishermen, and their union seek compensation for the loss which they consider they have suffered because of the adoption of Commission Regulation (EC) No 530/2008 ([1]) prohibiting fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea by purse seiners flying the Greek, French, Italian, Cypriot, Maltese or Spanish flag or registered in those Member States.

In support of their action, the applicants put forward a number of pleas in law and arguments alleging, respectively:

— breach of the principles of the Code of Conduct annexed to the internal rules of the Commission, since the Commission did not hold a meeting with the Syndicat des thoniers méditerranéens, despite having promised to do so;

— failure to compensate the applicant whose fishing activities are prohibited even though they have not yet filled their quota;

— that the measures adopted by the Commission do not constitute a mere risk inherent to the sector of activity for which the applicants should not be compensated;

— a lack of evidence of the need for the measures adopted, since those measures were adopted on the basis of mathematical extrapolations which do not constitute proof;

— that the measures at issue were not adopted on the basis of a serious threat;

— breach of the principle of legal certainty, since the Regulation at issue closing fishing of bluefin tuna was adopted in a very short time and annulled provisions which had just opened the fishing season;

— breach of the fundamental rights guaranteed by the Charter of fundamental rights of the European Union ([2]), more specifically of the right to engage in work and the right to property.

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

([2]) OJ 2000 C 364, p. 1.

Action brought on 29 December 2008 — Perusahaan Otomobil Nasional v OHIM — Proton Motor Fuel Cell (PM PROTON MOTOR)

(Case T-581/08)

(2009/C 69/95)

Language in which the application was lodged: English

Parties

Applicant: Perusahaan Otomobil Nasional Sdn. BHD (Shah Alam, Malaysia) (represented by: J. Blind, C. Kleiner and S. Ziegler, lawyers)

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

Other party to the proceedings before the Board of Appeal: Proton Motor Fuel Cell GmbH (Starnberg, Germany)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 9 October 2008 in case R 1675/2007-1, uphold the opposition No 501 306 for all goods and services and reject the application for the Community trade mark No 2 296 408; and

— Order the defendant and, if the case might be, the other party to the proceedings before the Board of Appeal to pay the costs of proceedings and the costs of appeal incurred before the defendant.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'PM PROTON MOTOR', for goods and services in classes 7, 9 and 42 — application No 2 296 408

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

Mark or sign cited: Community trade mark registration No 198 564 of the word mark 'PROTON' for goods and services in classes 12 and 37; Community trade mark registration No 1 593 201 of the figurative mark 'PROTON' for goods and services in classes 12 and 37; United Kingdom trade mark registration No 1 322 343 of the series of marks 'PROTON' for services in class 37; United Kingdom trade mark registration No 2 227 660 of the figurative mark 'PROTON' for goods and services in classes 12 and 37; United Kingdom trade mark registration No 2 182 057 of the word mark 'PROTON DIRECT' for goods in class 12; Registration of the word mark 'PROTON' in Benelux, Denmark, Finland, Germany, Greece, Ireland, Portugal and Spain

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

Decision of the Board of Appeal: Annulled the contested decision and dismissed the opposition

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; Infringement of Article 8(5) of Council Regulation 40/94 as the Board of Appeal failed to find that the trade mark cited in the opposition proceedings has reputation in the United Kingdom.

Action brought on 30 December 2008 — Carpent Languages v Commission

(Case T-582/08)

(2009/C 69/96)

Language of the case: French

Parties

Applicant: Carpent Languages SPRL (Brussels, Belgium) (represented by: P. Goergen, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare the action admissible and well founded;

— Accordingly, annul the decision to reject the applicant's tender;

— Annul the decision awarding the contract to ADIE TECHNICS SPRL;

— In the alternative, in the event that the Court does not grant the application for annulment of the contested decision, order the Commission to pay the applicant the sum of EUR 200 000 (two hundred thousand Euros) as compensation for the applicant's pecuniary and non-pecuniary losses;

— Order the Commission of the European Communities to pay all the costs.

Pleas in law and main arguments

The applicant contests the decision of the Commission to reject its tender made in respect of the call for tenders for lot No 4 of the contract notice 'Multiple framework contracts for meeting and conference organisation services' (OJ 2008 S 58-77561), and the decision to award the contract to another tenderer. The applicant also seeks compensation for the loss allegedly caused by the contested decision.

In support of its action, the applicant raises three pleas in law, alleging:

— breach of the duty to state reasons, since the Commission stated neither the number of points obtained by the successful tenderer nor the advantages of the successful tender over that of the applicant; furthermore, the Commission did not inform the applicant which of the two case studies which it submitted did not obtain a sufficient number of points;

— a manifest error of assessment, in that the Evaluation Committee attributed a score of less than 70 points to one of the case studies submitted by the applicant despite the fact that the applicant set out in detail, in accordance with the specifications, the approach which it would have taken to supply the services required, the means which it would have allocated to the different tasks, the work schedule and an estimate of the costs;

— a breach of the principles of equal treatment and non-discrimination as defined in Article 89(1) of the Financial Regulation, since the successful tenderer did not fulfil the selection criteria in respect of technical capacity.

Action brought on 22 December 2008 — Evropaïki Dynamiki v Commission

(Case T-589/08)

(2009/C 69/97)

Language of the case: English

Parties

Applicant: Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE (Athens, Greece) (represented by: N. Korogiannakis, P. Katsimani, M. Dermitzakis, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the decisions of the Commission to evaluate the applicant's bids as not successful and award the contracts to the successful contractor;

— order the Commission to pay the applicant's damages suffered on account of the tendering procedure in question for an amount of 920 000 EUR to be increased up to 1 700 000 EUR depending on the final amount of the CITL project;

— order the Commission to pay the applicant's legal and other costs and expenses incurred in connection with this application, even if the current application is rejected.

Pleas in law and main arguments

In the present case the applicant seeks the annulment of the defendant's decisions to reject its bids submitted in response to a call for an open tender ENV.C2/FRA/2008/0017 regarding the 'Emission Trading Scheme — CITL/CR' ([1]) and to award the contract to the successful contractor. The applicant further requests compensation for the alleged damages in account of the tender procedure.

In support of its claims the applicant puts forward two pleas in law.

First, it argues that the Commission committed several manifest errors of assessment while evaluating the three bids submitted by the applicant to the three Lots of the tender respectively.

Second, the applicant submits that the Commission failed to observe the principles of transparency and equal treatment and therefore infringed relevant provisions reflecting these principles such as Articles 92 and 100 of the financial regulation ([2]). Moreover, the applicant argues that the contracting authority infringed its obligation to sufficiently state reasons for its decision. It claims as well that the Commission failed to provide it with additional information that it requested after the award decision regarding the merits of the successful tenderer. Furthermore, the applicant submits that the contracting authority applied criteria that were not set out in advance and thus were unknown to the candidates.

([1]) OJ 2008/S 72-096229.

([2]) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 248, p. 1).

Action brought on 5 January 2009 — Dornbracht v OHIM — Metaform Lucchese (META)

(Case T-1/09)

(2009/C 69/98)

Language in which the application was lodged: German

Parties

Applicant: Aloys F. Dornbracht GmbH & Co. KG (Iserlohn, Germany) (represented by: P. Mes, C. Graf von der Groeben, G. Rother, J. Bühling, A. Verhauwen, J. Künzel, D. Jestaedt and M. Bergermann, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Metaform Lucchese SpA (Monsagrati, Italy)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Design) of 3 November 2008 (R 1152/2006-4);

— Order the defendant to pay the costs including those costs incurred before the Board of Appeal.

Pleas in law and main arguments

Applicant for a Community trade mark: Aloys F. Dornbracht GmbH & Co. KG.

Community trade mark concerned: the word mark 'META' for goods in Classes 9, 11, 20 and 21 (Application No 3 081 271).

Proprietor of the mark or sign cited in the opposition proceedings: Metaform Lucchese SpA.

Mark or sign cited in opposition: the figurative mark 'METAFORM' for goods in Classes 6, 11, 20, 21 and 24 (Community trade mark No 1 765 361), the Italian figurative mark (Trade mark No 587 108) and the international figurative mark (Trade mark No 603 054) also for goods in Classes 6, 11, 20, 21 and 24.

Decision of the Opposition Division: Opposition upheld.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 8(1)(b) of Regulation (EC) No 40/94 ([1]), in that there is no likelihood of confusion between the marks at issue.

([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 2 January 2009 — Lind v Commission

(Case T-5/09)

(2009/C 69/99)

Language of the case: English

Parties

Applicant: Brigit Lind (Greve, Denmark) (represented by: I. Anderson, advocate)

Defendant: Commission of the European Communities

Form of order sought

— order the Commission to pay to the applicant, individually, the sum of 50 000 EUR, or such other sum as the Court may consider just and equitable, for shock and distress experienced by her from her brother's suffering and wrongful death as result of the Commission's capricious and unlawful refusal to enforce the implementation of medical monitoring provisions of Directive 96/29 in the case of the former workers who participated in the radiological emergency at Thule;

— order the Commission to pay to the estate of John Erling Nochen, as represented by the applicant, the sum of 250 000 EUR, or such other sum as the Court may consider just and equitable, for pain and suffering, including the awareness of the curtailment of life, from 2006 until his death in 2008, as result of the Commission's capricious and unlawful refusal to enforce the implementation of medical monitoring provisions of Directive 96/29 in the case of the former workers who participated in the radiological emergency at Thule and the sum of 6 000 EUR, for funeral expenses;

— order the Commission to pay reasonable legal costs and disbursements incurred by the applicant in bringing the present proceedings.

Pleas in law and main arguments

In the present case, the applicant is bringing an action for non-contractual liability arising from the damages she claims to have incurred from her brother's death allegedly caused by illegal refusal by the Commission to comply with plenary resolution of the European Parliament ([1]) and to enforce the application by Denmark of the provisions of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation ([2]) to the case of workers, including the applicant's brother, involved in a nuclear accident in Thule, Greenland.

([1]) European Parliament report of 20 April 2007 on the public health consequences of the 1968 Thule crash (Petition 720/2002) [2006/2012(INI)].
([2]) OJ L 159, p. 1.

Action brought on 12 January 2009 — Hansen v Commission

(Case T-6/09)

(2009/C 69/100)

Language of the case: English

Parties

Applicant: Bent Hansen (Aarslev, Denmark) (represented by: I. Anderson, advocate)

Defendant: Commission of the European Communities

Form of order sought

— order the Commission to pay to the applicant the sum of 800 000 EUR or such other sum as the Court may consider just and equitable for past, present and future pain, suffering and diminution of the enjoyment of life from serious impairments to his health resulting from the Commission's capricious and unlawful refusal to enforce the implementation of medical monitoring of Directive 96/26 for radiation related illnesses and conditions in the case of former Thule workers;

— order the Commission to pay to the applicant or the medical treating facilities or care givers, the future costs of medical treatments and medications to alleviate and/or treat his impaired health, referred to in the first claim above, which are not available to him through the socialized medical system of his Member State;

— order the Commission to pay reasonable legal costs and disbursements incurred by the applicant in bringing the present proceedings.

Pleas in law and main arguments

In the present case, the applicant is bringing an action for non-contractual liability arising from the damages he claims to have incurred as a result of the alleged illegal refusal by the Commission to comply with plenary resolution of the European Parliament ([1]) and to enforce the application by Denmark of the provisions of Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionizing radiation ([2]) to the case of workers, including the applicant, involved in a nuclear accident in Thule, Greenland.

([1]) European Parliament report of 20 April 2007 on the public health consequences of the 1968 Thule crash (Petition 720/2002) [2006/2012(INI)].
([2]) OJ L 159, p. 1.

Action brought on 12 January 2009 — Schunk v OHIM (cylinder-shaped section of a chuck)

(Case T-7/09)

(2009/C 69/101)

Language in which the application was lodged: Germany

Parties

Applicant: Schunk GmbH & Co. KG Spann- und Greiftechnik (Lauffen am Neckar, Germany) (represented by C. Koppe-Zagouras, lawyer)

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

Form of order sought

— annul the decision of the First Board of Appeal of 31 October 2008 — Case R 1109/2007-1;

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: another type of mark, showing the cylinder-shaped section of a chuck, for goods in Classes 7 and 8 — Application No 3 098 894

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 Regulation (EC) No 40/94 ([1]), as the registered mark has the necessary distinctive character. Further, the registered mark has distinctive character in consequence of use under Article 7(3) of Regulation No 40/94.

([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 13 January 2009 — Gruber v OHIM (Run the globe)

(Case T-12/09)

(2009/C 69/102)

Language in which the application was lodged: German

Parties

Applicant: Alexander Gruber (Ulm, Germany) (represented by T. Kienle and M. Krinke, lawyers)

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

Form of order sought

— annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2008 (Case R 1779/2007-1);

— order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: the word mark 'Run the globe' for services in Class 41 — Application No 5 154 521

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 Regulation No 40/94 ([1]), as the registered mark has the necessary distinctive character.

([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 15 January 2009 — Storck v OHIM (Mouse-shaped chocolate)

(Case T-13/09)

(2009/C 69/103)

Language of the case: German

Parties

Applicant: August Storck KG (Berlin, Germany) (represented by P. Goldenbaum, T. Melchert and I. Rohr, lawyers)

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

Form of order sought

— Annul the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market of 12 November 2008 (R 185/2006-4); and

— Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a three-dimensional mark, which represents a mouse made out of chocolate, for goods in Class 30 (Application No 4 490 447).

Decision of the Examiner: Application refused.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b) of Regulation (EC) No 40/94 ([1]), in that the trade mark applied for has the necessary distinctive character.

([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 16 January 2009 — Vanhecke v Parliament

(Case T-14/09)

(2009/C 69/104)

Language of the case: Dutch

Parties

Applicant: Frank Vanhecke (Bruges, Belgium) (represented by: R. Tournicourt and B. Siffert, lawyers)

Defendant: European Parliament

Form of order sought

— set aside the contested decision of the European Parliament of 18 November 2008, which was notified to the applicant on 30 November 2008, by which the applicant's parliamentary immunity was waived;

— order the defendant to pay the costs.

Pleas in law and main arguments

By letter addressed to the President of the European Parliament, the Belgian Minister for Justice requested that the applicant's parliamentary immunity be waived. According to the applicant, this request was submitted in response to an application made by the public prosecutor's office in the town of Dendermonde, which sought to prosecute the applicant on the basis of the content of an article published in a local party newspaper in the town of Sint-Niklaas of which the applicant was the responsible publisher.

The European Parliament subsequently decided to waive the applicant's parliamentary immunity.

In support of his application, the applicant first of all submits that, in accordance with Article 10 of the Protocol on the Privileges and Immunities of the European Communities, the members of the European Parliament enjoy, within their own respective territories, the immunities which are conferred on members of national parliaments in their respective countries. From this it follows, according to the applicant, that an application to have the immunity of a member of the European Parliament waived may be made only by the body which is authorised under national law to seek revocation of the immunity of a member of the national parliament. Consequently, an application for the institution of the procedure for lifting parliamentary immunity ought to be addressed to the Minister for Justice by the central public prosecutor's office, as this exists at the level of the Hof van beroep (Court of Appeal), and not, as has happened in the present case, by a local public prosecutor's office organised at local district level.

The second plea in law concerns the taking of the decision within the Committee on Legal Affairs of the European Parliament. The applicant submits that the members of the Committee who took the decision on the request that the applicant's parliamentary immunity be waived either had to be present at the hearing when the applicant set out his views or had to have a true and accurate report available to them which set out the line of argument followed. The applicant claims that this was not the case here.

Third, the applicant claims that there has been a breach of confidentiality and the obligation of secrecy. He submits in this regard that, before the final vote was taken by the Committee on Legal Affairs, the report of the committee chairperson was already available to the press.

Fourth, the applicant alleges that there has been a breach of Article 7 of the Rules of Procedure of the European Parliament by reason of the fact that any debate in the plenary session was made impossible.

Fifth, the applicant alleges deficient reasoning inasmuch as the contested decision confines itself to referring to the report of the Committee on Legal Affairs.

Sixth, the applicant takes issue with the reasoning employed by the Committee on Legal Affairs to the effect that 'an MEP's duties do not include acting as responsible editor for a national party newspaper'. The applicant takes the view that one of the tasks of a politician is to express and disseminate a political opinion, and the publication and drafting, as the responsible editor, of political tracts and publications is, in particular, part of the task of a member of the European Parliament.

Action brought on 15 January 2009 — Euro-Information v OHIM (EURO AUTOMATIC CASH)

(Case T-15/09)

(2009/C 69/105)

Language in which the application was lodged: French

Parties

Applicant: Européenne de traitement de l'Information (Euro-Information) (Strasbourg, France) (represented by: A. Grolée, lawyer)

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

Form of order sought

— annulment of the decision of the Fourth Board of Appeal of OHIM of 18 November 2008, Case R 70/2006-4, in that it refused registration of the Community trade mark application EURO AUTOMATIC CASH No 4 114 864 with regard to the entirety of the goods and services claimed in Classes 9, 35, 36, 37, 38 and 42;

— registration of the application for Community trade mark EURO AUTOMATIC CASH No 4 114 864 for all the goods and services referred to in the application filed;

— OHIM to be ordered to pay the costs of the applicant incurred in the proceedings before OHIM and in the present action, under Article 87 of the Rules of Procedure.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'EURO AUTOMATIC CASH' for goods and services in Classes 9, 35, 36, 37, 38 and 42 — application No 4 114 864

Decision of the Examiner: Refusal of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) and (c) and of Article 7(2) of Council Regulation No 40/94, since the trade mark applied for is not descriptive and has the necessary distinctive character.

Action brought on 16 January 2009 — Eurotel SpA v OHIM

(Case T-21/09)

(2009/C 69/106)

Language in which the application was lodged: Italian

Parties

Applicant: Eurotel SpA (Milan, Italy) (represented by: F. Paola, 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: DVB Project

Form of order sought

— Annul the decision of the Board of Appeal and, consequently, declare invalid the figurative Community mark 'DVB', which is manifestly contrary to the spirit and wording of Article 7(1)(b), (c) and (d) of the Regulation on the Community trade mark;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Registered Community trade mark in respect of which a declaration of invalidity has been sought: figurative mark 'DVB' (registration application No 2.75.771), for goods and services in Classes 9 and 38.

Proprietor of the Community trade mark: DVB Project.

Applicant for the declaration of invalidity: the applicant.

Trade mark right of applicant for the declaration: the party seeking a declaration of invalidity is not claiming any trade mark right, but argues that the mark in question is descriptive and generic.

Decision of the Cancellation Division: application for declaration of invalidity dismissed.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Infringement of Article 7(1)(b), (c) and (d) of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Action brought on 20 January 2009 — Katjes Fassin v OHIM (shape of a panda face)

(Case T-22/09)

(2009/C 69/107)

Language in which the application was lodged: German

Parties

Applicant: Katjes Fassin GmbH & Co. KG (Emmerich am Rhein, Germany) (represented by T. Schmitz, lawyer)

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

Form of order sought

— annul the decision of the Fourth Board of Appeal of OHIM of 13 November 2008 in Case R 1299/2006-4;

— order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: a three-dimensional mark, showing a chocolate panda face, for goods in Class 30 — Application No 4 505 161

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 Regulation No 40/94 [1], as the registered mark has the necessary distinctive character.

[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 19 January 2009 — Johnson & Johnson v OHIM — Simca (YourCare)

(Case T-25/09)

(2009/C 69/108)

Language in which the application was lodged: English

Parties

Applicant: Johnson & Johnson GmbH (Düsseldorf, Germany) (represented by: A. Gérard, lawyer)

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

Other party to the proceedings before the Board of Appeal: Simca Srl (Cesano Boscone (MI), Italy)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 6 November 2008 in case R 175/2008-1;

— Allow the opposition and reject the trade mark application No 4 584 587 for the figurative mark 'YourCare'; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

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

Community trade mark concerned: The figurative mark 'YourCare', for goods in classes 3, 8 and 21

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

Mark or sign cited: German trade mark registration No 2 913 574 of the word mark 'Young Care' for goods in classes 3 and 5; German trade mark registration No 30 416 018 of the figurative mark 'bebe young care' for goods and services in classes 3, 21 and 44; German trade mark registration No 30 414 452 of the word mark 'Young Care' for goods in class 21.

Decision of the Opposition Division: Allowed the opposition in its entirety and rejected the Community trade mark application

Decision of the Board of Appeal: Annulled the contested decision

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was no likelihood of confusion between the trade marks concerned; Infringement of Article 74(1) of Council Regulation 40/94 as the Board of Appeal failed to take into account factual evidence provided by the applicant.

Action brought on 20 January 2009 — Easycamp v OHIM — Oase Outdoors (EASYCAMP)

(Case T-29/09)

(2009/C 69/109)

Language in which the application was lodged: English

Parties

Applicant: Easycamp BV (Amersfoort, The Netherlands) (represented by: C. Beijer, lawyer)

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

Other party to the proceedings before the Board of Appeal: Oase Outdoors ApS (Give, Denmark)

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 30 October 2008 in joined cases R 853/2007-1 and R 916/2007-1;

— Allow the applicant to continue to use the Community trade mark — application No 3 188 943 for services in class 43; and

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'EASYCAMP', for services in classes 39, 41 and 43

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: Danish trade mark registration No 199 903 355 of the figurative mark 'easycamp' for goods in classes 18, 20, 22, 24, 25 and 28; German trade mark registration No 39 910 614 of the figurative mark 'easycamp' for goods in classes 18, 20, 22, 24, 25 and 28; Benelux trade mark registration No 944 316 of the figurative mark 'easycamp' for goods in classes 18, 20, 22, 24, 25 and 28; United Kingdom trade mark registration No 2 191 370 of the figurative mark 'easycamp' for goods in classes 18, 20, 22, 24, 25 and 28; The unregistered sign 'easy camp' used in Denmark and the United Kingdom.

Decision of the Opposition Division: Partially allowed the opposition

Decision of the Board of Appeal: Dismissed the appeals

Pleas in law: Infringement of Article 8(1)(b) of Council Regulation 40/94 as the Board of Appeal wrongly assessed that there was a likelihood of confusion between the trade marks concerned.

Action brought on 21 January 2009 — Baid v OHIM (LE GOMMAGE DES FACADES)

(Case T-31/09)

(2009/C 69/110)

Language in which the application was lodged: French

Parties

Applicant: Baid SARL (Paris, France) (represented by M. Grasset, lawyer)

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

Form of order sought

— Annul the decision of the First Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 30 October 2008 (Case R 963/2008-1) and alter it to the effect that the action before OHIM brought by the applicant is well founded and, consequently, that the mark applied for is granted;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Word mark 'LE GOMMAGE DES FACADES' for goods and services in Classes 3, 19 and 37 — application No 6 071 641

Decision of the Examiner: Rejection of the application for registration

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(c) of Council Regulation No 40/94, since the mark applied for is not descriptive; of Article 7(3) of that regulation, since the mark applied for has acquired distinctive character through use and of Article 73 of that regulation, since the contested decision is largely based on references to Internet pages.

Appeal brought on 26 January 2009 by Luigi Marcuccio against the judgment of the Civil Service Tribunal delivered on 4 November 2008 in Case F-18/07 Marcuccio v Commission

(Case T-32/09 P)

(2009/C 69/111)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

— In every case

(A.1) set aside in its entirety and without exception the order under appeal;

(A.2) declare the action at first instance to be admissible in full.

— As a primary remedy:

(B.1) uphold in their entirety and without exception the appellant's pleas in law set out in the application at first instance;

(B.2) order the respondent to pay the appellant's costs relating to this appeal and to the proceedings at first instance;

— or, in the alternative:

(B.3) refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

This appeal is directed against the order of the Civil Service Tribunal of 4 November 2008 in Case F-18/07 *Marcuccio* v *Commission*, which declared the appellant's action to be manifestly inadmissible.

In support of the forms of order sought by him, the appellant raises the following pleas in law:

— Complete failure to state adequate reasons as regards the classification of the note of 11 October 2005 referred to in paragraph 3 of the order under appeal as an application made under Article 90 of the Staff Regulations, with the result that, in the case at issue, the provisions of Article 90 of the Staff Regulations were applied.

— Complete failure to state adequate reasons as regard the statements concerning the date on which the note of 11 October 2005 reached the respondent and the date on which the contested decision took effect.

— Unlawful findings as regards the alleged manifest inadmissibility of the action at first instance in its entirety.

Complete failure to state adequate reasons and a failure to make preliminary enquiries as regards the date on which the defence was lodged and a procedural error in that no account was taken of the requirement not to have regard to the arguments contained in the defence in so far as made out of time.

— Infringement of the rule that there should be a fair hearing, as laid down in Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

Action brought on 26 January 2009 — Procaps v OHIM — Bioframa (PROCAPS)

(Case T-35/09)

(2009/C 69/112)

Language in which the application was lodged: Spanish

Parties

Applicant: Procaps SA (Barranquilla, Colombia) (represented by: M. Vidal-Quadras Trias de Bes, 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: Biofarma SAS (Neuilly sur Seine, France)

Form of order sought

— Annul the decision of the Fourth Board of Appeal of OHIM (Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 24 November 2008 in Case R 867/2007-4 which was notified to the parties on 25 November 2008.

Pleas in law and main arguments

Applicant for a Community trade mark: The applicant

Community trade mark concerned: Word mark 'PROCAPS' (Trade mark application No 3.519.394) for goods and services in Classes 5, 35, 39, 40, 44.

Proprietor of the mark or sign cited in the opposition proceedings: BIOFARMA, société par actions simplifiée.

Mark or sign cited in opposition: National and international word mark 'PROCAPTAN', for goods in Class 5.

Decision of the Opposition Division: Opposition: Opposition rejected.

Decision of the Board of Appeal: Appeal dismissed in part

Pleas in law: Incorrect application of Article 9(1)(b) of Regulation No 40/94 on the Community trade mark.

Action brought on 30 January 2009 — El Corte Inglés v Commission

(Case T-38/09)

(2009/C 69/113)

Language of the case: Spanish

Parties

Applicant: El Corte Inglés (Madrid, Spain) (represented by: P. Muñiz and M. Baz, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

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

Pleas in law and main arguments

This action is brought against Commission Decision C(2008) 6317 final of 3 November 2008 ordering the a posteriori recovery of import duties and finding that the remission of those duties was not justified in a particular case (REM File 03/07).

The applicant imported textiles from Jamaica, imports subject to the system of preferential treatment laid down in the EU-ACP Association Agreement provided that they are accompanied by a EUR. 1 movement of goods certificate, sent by the competent Jamaican authorities. The certificate was included as evidence that the goods originated in Jamaica. However, an OLAF investigation in Jamaica concluded that the goods did not acquire preferential origin status in Jamaica, so that they could not benefit from preferential treatment.

In response to the request for remission of the tax submitted by the applicant on the basis of Article 239 of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code, the contested decision declared that the Jamaican authorities had not committed an error of the kind provided for in Article 220(2)(b) of that regulation and that the applicant was not in a special situation as a result of the incorrect representation of the facts by the exporters.

The applicant claims that the contested decision is null and void for the following reasons:

— The administrative procedure for the adoption of the contested decision infringes essential procedural requirements. Specifically, the contested decision breaches the principle of sound administration and seriously infringes the applicant's rights of defence on the ground that no administrative file exists concerning the processing of the contested decision.

— The contested decision contains an error of assessment by concluding that the applicant is not in a special situation. In this case a special situation exists in so far as:

  — the Jamaican authorities knew or ought to have known that that the goods did not satisfy the conditions laid down for entitlement to the preferential treatment, even if the exporters had supplied incorrect information,

  — the Jamaican authorities committed a serious breach of their obligations.

— The defendant failed to fulfil its obligation to ensure the ACP-EC Agreement is properly applied.

Action brought on 28 January 2009 — A. Loacker SpA v OHIM

(Case T-42/09)

(2009/C 69/114)

Language in which the application was lodged: Italian

Parties

Applicant: A. Loacker SpA (Renon, Italy) (represented by: V. Bilardo, C. Bacchini, M. Mazzitelli, lawyers)

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

Other party to the proceedings before the Board of Appeal of OHIM: Editrice Quadratum SpA (Milan, Italy)

Form of order sought

— Annul the contested decision;

— Order OHIM to pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Editrice Quadratum SpA.

Community trade mark concerned: Word mark 'Quadratum', registration application No 4653481, for goods in Class 30.

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

Mark or sign cited in opposition: Community word mark 'LOACKER QUADRATINI', for goods in Class 30.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Action brought by the trade mark applicant upheld.

Pleas in law: Infringement of Article 8(1)(b) and of Articles 73 and 74 of Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark.

Action brought on 3 February 2009 — Cachuera v OHIM — Gelkaps (Ayanda)

(Case T-43/09)

(2009/C 69/115)

Language in which the application was lodged: Spanish

Parties

Applicant: La Cachuera SA (Misiones, Argentina) (represented by: E. Armijo Chávarri, 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: Gelkaps GmbH (Pritzwalk, Germany).

Form of order sought

— Declare the action against the Decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (OHIM) of 19 November 2008 lodged in time and in the required form and, via the appropriate procedure, order the annulment of that decision and order expressly that OHIM pay the costs.

Pleas in law and main arguments

Applicant for a Community trade mark: Gelkaps GmbH.

Community trade mark concerned: Word mark 'AYANDA' (Application No 3.315.405) for goods and services in Classes 3, 5, 28, 29, 30, 32 and 44.

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

Mark or sign cited in opposition: Spanish figurative and word marks 'AMANDA', for goods in Class 30.

Decision of the Opposition Division: Opposition upheld in part.

Decision of the Board of Appeal: Appeal dismissed.

Pleas in law: Incorrect application of Article 8(1)(b) of Regulation (EC) No 40/94 on the Community trade mark.

Order of the Court of First Instance of 16 January 2009 — Italy v Commission

(Case T-431/04) ([1])

(2009/C 69/116)

Language of the case: Italian

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

([1]) OJ C 314, 18.12.2004.

Order of the Court of First Instance of 15 January 2009 — Commission v Banca di Roma

(Case T-261/07) ([1])

(2009/C 69/117)

Language of the case: Italian

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

([1]) OJ C 211, 8.9.2007.

Order of the Court of First Instance of 3 February 2009 — Comtec Translations v Commission

(Case T-239/08) ([1])

(2009/C 69/118)

Language of the case: English

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

([1]) OJ C 209, 15.8.2008.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 12 December 2008 — Di Prospero v Commission

(Case F-99/08)

(2009/C 69/119)

Language of the case: French

Parties

Applicant: Rita Di Prospero (Uccle, Belgium) (represented by: S. Rodriguez and C. Bernard-Glanz, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Annulment of EPSO's decision not to accept the applicant's application for competition EPSO/AD/117/08

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision of the European Personnel Selection Office (EPSO) not to have allowed the applicant to submit an application for competition EPSO/AD/117/08;

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

Action brought on 21 January 2009 — De Britto Patricio-Dias v Commission

(Case F-4/09)

(2009/C 69/120)

Language of the case: French

Parties

Applicant: Jorge De Britto Patricio-Dias (Brussels, Belgium) (represented by: L. Massaux, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Application for annulment of the decision to reassign the applicant to unit TREN.B.3

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decisions of the Appointing Authority of 11 April 2008 and 21 October 2008;

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

Action brought on 2 February 2009 — Fares v Commission

(Case F-6/09)

(2009/C 69/121)

Language of the case: French

Parties

Applicant: Soukaïna Fares (Berchem-Sainte-Agathe, Belgium) (represented by: L. Vogel, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Application for annulment of the decision to classify the applicant in function group III, grade 8.

Form of order sought

The applicant claims the Tribunal should:

— Annul the decision adopted by the Authority Authorised to Conclude Contracts on 17 October, by which it rejected the complaint brought by the applicant on 21 June 2008 seeking annulment of the decision classifying the applicant in function group III, at grade 8, and applying for entitlement for classification at grade 9, with effect on the same date;

— So far as necessary, also annul the original decision, by which the applicant was classified in function group III, at grade 8;

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

Action brought on 30 January 2009 — Faria v OHIM

(Case F-7/09)

(2009/C 69/122)

Language of the case: French

Parties

Applicant: Marie-Hélène Faria (Muchamiel, Spain) (represented by: L. Levi, lawyer)

Defendant: Office for Harmonisation in the Internal Market

Subject-matter and description of the proceedings

Application for annulment of the evaluation report in respect of the period from 1 October 2006 to 30 September 2007, and an order that the defendant pay compensation for the loss suffered by the applicant.

Form of order sought

The applicant claims the Tribunal should:

— Annul the evaluation report in respect of the period from 1 October 2006 to 30 September 2007;

— So far as necessary, annul the decision of 17 October 2008 rejecting the complaint brought by the applicant;

— Order the defendant to pay damages to compensate for the non-material harm suffered, assessed on equitable principles at EUR 100 000;

— Order OHIM to pay the costs.