Questions referred

1. Is European primary and/or secondary law, here in particular Directive 2000/78/EC, [1] to be interpreted as a comprehensive prohibition of unjustified age discrimination, such that it also covers national rules on the remuneration of Federal civil servants?

2. If Question 1 is answered in the affirmative: does the interpretation of this European primary and/or secondary law mean that a national provision under which the level of the basic pay of a civil servant on establishment of the status of civil servant is substantially dependent on his age and also, in particular, rises according to the duration of civil servant status constitutes direct or indirect age discrimination?

3. If Question 2 is also answered in the affirmative: does the interpretation of this European primary and/or secondary law preclude the justification of such a national provision by the legislative aim of making payment for professional experience?

4. If Question 3 is also answered in the affirmative: does the interpretation of European primary and/or secondary law, where a non-discriminatory right to remuneration has not been implemented, permit a legal consequence other than retrospective remuneration of those discriminated against at the highest pay step in their pay grade?

   Does the legal consequence of infringement of the prohibition of discrimination in that case follow from European primary and/or secondary law itself, here in particular Directive 2000/78/EC, or does the claim follow only from the point of view of failure to implement the rules of European law in accordance with the claim to State liability under European Union law?

5. Does the interpretation of European primary and/or secondary law preclude a national measure which makes the claim to (retrospective) payment or compensation dependent on the civil servants' having enforced that claim in good time?

[1] Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation (OJ 2000 L 303, p. 16)

Action brought on 27 November 2012 — European Commission v Republic of Poland

(Case C-544/12)

(2013/C 46/28)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: P. Hetsch, K. Simonsson and J. Hottiaux, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2009/12/EC of the European Parliament and of the Council of 11 March 2009 on airport charges [1] and in any event by not notifying the Commission of such provisions, the Republic of Poland has failed to fulfil its obligations under Articles 1, 6(2), 7, 8, 9 and 13 of that directive;

— impose upon the Republic of Poland, in accordance with Article 260(3) TFEU, a penalty payment for failure to fulfil its obligation to notify measures transposing Directive 2009/12/EC at the daily rate of EUR 75 002,88 from the day on which judgment is delivered in the present case;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The period for transposing Directive 2009/12/EC expired on 15 March 2011.

[1] OJ 2009 L 70, p. 11.

Appeal brought by the Federal Republic of Germany against the judgment of the General Court (Third Chamber) of 19 September 2012 in Case T-265/08 Federal Republic of Germany v European Commission, lodged on 29 November 2012

(Case C-549/12 P)

(2013/C 46/29)

Language of the case: German

Parties

Appellant: Federal Republic of Germany (Represented by: T. Henze, acting as Agent, and by U. Karpenstein and C. Johann, Rechtsanwälte)

The other parties to the proceedings: European Commission, the Kingdom of Spain, the French Republic and the Kingdom of the Netherlands

Form of order sought

The appellant claims that the Court should:

1. set aside the judgement of the General Court of the European Union of 19 September 2012 in Case T-265/08 *Federal Republic of Germany* v *European Commission*; interveners supporting the Federal Republic of Germany: *Kingdom of Spain*, *French Republic* and *Kingdom of the Netherlands*, concerning an action for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme

in the Objective 1 area of *Land* Thüringen (Federal Republic of Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994 ***and*** annul Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land* Thüringen (Germany) (1994-1999);

2. order the Commission to pay the costs.

Grounds of appeal and main arguments

The subject matter of this appeal is the judgment of the General Court of 19 September 2012 in Case T-265/08 *Germany* v *Commission*, whereby the General Court dismissed the Federal Republic of Germany's application for annulment of Commission Decision C(2008) 1690 final of 30 April 2008 reducing the financial assistance granted from the European Regional Development Fund (ERDF) to the Operational Programme in the Objective 1 area of *Land* Thüringen (Germany) (1994-1999), in accordance with Commission Decision C(94)1939/5 of 5 August 1994.

The appellant relies on two grounds of appeal:

First, the appellant claims that the General Court breached Article 24(2) of Council Regulation (EEC) No 4253/88, ([1]) in conjunction with Article 1 of Council Regulation (EC, Euratom) No 2988/95 ([2]) and the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU; formerly Article 5 EC), in so far as it erroneously assumed that even administrative errors made by national authorities could constitute 'irregularities' justifying the application of financial corrections by the Commission (first part of the first ground of appeal). Even if a financial correction for an administrative error might in principle be conceivable, the judgment under appeal should still be set aside since the General Court unlawfully assumed that even infringements of national law and errors which do not affect the European Union budget could constitute 'irregularities' justifying financial corrections (second part of the first ground of appeal).

Secondly, the appellant submits that the General Court also breached Article 24(2) of Regulation No 4253/88, in conjunction with the principle of the conferral of limited powers (Article 5(2) TEU, Article 7 TFEU), inasmuch as it erroneously conferred on the Commission the power to carry out financial corrections on the basis of extrapolation (first part of the second ground of appeal). Even if, in principle, the Commission had such a power to extrapolate, the General Court erred in its confirmation of the nature and manner of its application in the present case. On the one hand, a loss to the European Union budget has not been established as regards, at least, a part of the project at issue. On the other hand, the Commission should not have classified a portion of the errors complained of as systemic errors (second part of the second ground of appeal).

([1]) Council Regulation (EEC) No 4253/88 of 19 December 1988 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and other existing financial instruments (OJ 1988 L 374, p. 1).

([2]) 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).

Appeal brought on 6 December 2012 by El Corte Inglés, SA against the judgment of the General Court (Sixth Chamber) delivered on 27 September 2012 in Case T-39/10: El Corte Inglés, SA v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-578/12 P)

(2013/C 46/30)

Language of the case: English

Parties

Appellant: El Corte Inglés, SA (represented by: E. Seijo Veiguela, abogada, J.L. Rivas Zurdo, abogado)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Emilio Pucci International BV

Form of order sought

The appellant claims that the Court should:

— Annul the judgment of the General Court of 27th September, 2012 in case T-39/10 in its entirety.

— Order the OHIM to pay the costs incurred by El Corte Inglés, SA.

— Order Emilio Pucci International BV to pay the costs incurred by El Corte Inglés, SA.

Pleas in law and main arguments

The appellant submits that there exists likelihood of confusion (article 8.1.b CTMR ([1])) between the earlier trademarks 'EMIDIO TUCCI' and 'E. TUCCI' and the contested CTM application 'PUCCI', in respect of all the designated products in classes 3, 9, 14, 18, 25 and 28, as it has proved genuine use of all its Spanish trademarks and there is one trademark (community trademark application No. 3679528) which is not subject to this obligation, and the signs in controversy are confusingly