

3. Is Article 56 TFEU (formerly Article 49 [of the EC Treaty]) compatible with Real Decreto 1373/2003 of 7 November 2003, the regulation on the tariff applying to *procuradores*?
4. Do those rules meet the requirements of necessity and proportionality referred to in Article 15(3) of Directive 2006/123/EC? ⁽¹⁾
5. Does Article 6 of the European Convention on Human Rights, entrenching the right to a fair trial, encompass the right to be able to mount a proper defence in a situation where the figure at which the fees of a *procurador* are set is disproportionately high and does not reflect the work actually carried out?
6. If so, is the Spanish *Ley de Enjuiciamiento Civil* compatible with Article 6 of the European Convention on Human Rights in so far as it prevents the party ordered to pay costs from challenging the fees claimed by the *procurador* on the grounds that they are excessively high and do not reflect the work actually carried out?

⁽¹⁾ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36).

Request for a preliminary ruling from the Högsta domstolen (Sweden) lodged on 22 May 2013 — C More Entertainment AB v Linus Sandberg

(Case C-279/13)

(2013/C 207/55)

Language of the case: Swedish

Referring court

Högsta domstolen

Parties to the main proceedings

Applicant: C More Entertainment AB

Defendant: Linus Sandberg

Questions referred

1. Does the expression communication to the public, within the meaning of Article 3(1) ⁽¹⁾ of the Information Society Directive, include measures to make available on a website open to the public a clickable link to a work which is broadcast by the holder of the copyright in that work?
2. Is the manner in which the linking is done relevant to the answer to question 1?

3. Is it relevant if the access to the work to which the linking is done is in any way restricted?
4. May the Member States give wider protection to the exclusive right of rightholders by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(1) of the Information Society Directive?
5. May the Member States give wider protection to the exclusive right of authors by enabling 'communication to the public' to cover a greater range of acts than provided for in Article 3(1) of the Information Society Directive?

⁽¹⁾ Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).

Request for a preliminary ruling from the Eparkhiako Dikastirio Lefkosias (Cyprus) lodged on 27 May 2013 — Sotiris Papasavvas v O Phileleftheros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis

(Case C-291/13)

(2013/C 207/56)

Language of the case: Greek

Referring court

Eparkhiako Dikastirio Lefkosias

Parties to the main proceedings

Claimant: Sotiris Papasavvas

Defendants: O Phileleftheros Dimosia Etairia Ltd, Takis Kounnafi, Giorgos Sertis

Questions referred

1. Bearing in mind that the laws of the Member States on defamation affect the capacity to provide information services by electronic means both at national level and within the European Union, might those laws be regarded as restrictions on the provision of information services for the purposes of applying Directive 2000/31/EC?
2. If the answer to Question 1 is in the affirmative, do the provisions of Articles 12, 13 and 14 of Directive 2000/31/EC, on the question of liability, apply to private civil matters, such as civil liability for defamation, or are they limited to civil liability in matters concerning business to consumer transactions?

3. Bearing in mind the purpose of Articles 12, 13 and 14 of Directive 2000/31/EC relating to the liability of information society service providers and the fact that, in many Member States, an action must exist in order for a prohibitory injunction to be granted which will remain in force pending full completion of the proceedings, do those articles create individual rights which may be pleaded as defences in law in a civil action for defamation, or must they operate as an obstacle in law to the bringing of such actions?
4. Do the definitions of 'information society service' and 'service provider' in Article 2 of Directive 2000/31/EC and Article 1(2) of Directive 98/34/EC, as amended by Directive 98/48/EC, cover online information services the remuneration for which is provided not directly by the recipient, but indirectly by means of commercial advertisements posted on the website?
5. Bearing in mind the definition of 'information service provider', laid down in Article 2 of Directive 2000/31/EC and Article 1(2) of Directive 98/34/EC, as amended by Directive 98/48/EC, could the following, or any of them, be regarded as a 'mere conduit' or 'caching' or 'hosting' for the purposes of Articles 12, 13 and 14 of Directive 2000/31/EC:
 - (a) a newspaper that operates a free website on which the online version of the printed newspaper, with all its articles and advertisements, is posted in pdf format or another similar electronic format;
 - (b) an online newspaper which is freely accessible but the provider obtains money from commercial advertisements posted on the website, where the information contained in the online newspaper comes from the newspaper's staff and/or freelance journalists;
 - (c) a website which provides (a) or (b) above for a subscription?

Appeal brought on 30 May 2013 by El Corte Inglés, S.A. against the judgment of the General Court (Fourth Chamber) delivered on 20 March 2013 in Case T-571/11 El Corte Inglés v OHIM — Chez Gerard (CLUB GOURMET)

(Case C-301/13 P)

(2013/C 207/57)

Language of the case: Spanish

Parties

Appellant: El Corte Inglés, S.A. (represented by: J.L. Rivas Zurdo and E. Seijo Veiguela, abogados)

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

Form of order sought

- Set aside the judgment of the General Court of 20 March 2013 in Case T-571/11 in its entirety
- Order the party or parties which oppose this action to pay the costs

Pleas in law and main arguments

1. Breach of the principle of legal certainty and legitimate expectations

The principle of legal certainty requires 'an unequivocal wording which gives the persons concerned a clear and precise understanding of their rights and obligations'. This principle is related to the principle of legitimate expectations, emphasising the need for administrative decisions to set out the reasons on which they are based when they diverge from earlier decisions that may give rise to legitimate expectations on the part of their addressees.

The way in which Spanish 'slogan marks' (registered during the period of validity of the 1997 Guidelines) have been applied by Spanish courts is in clear conflict with the Community administrative measures in opposition proceedings B 877 714 and with the judgment of the General Court of 20 March 2013 in Case T-571/11: as the Opposition Division had doubts about the wording relating to the earlier mark, it should have remedied this by asking the Spanish Patent and Trade Mark Office for clarification on this point or indeed required the appellant to provide submissions in its defence.

2. Manifest error of assessment of the background to the dispute

The appellant claims that the judgment regards it as being established that the opposing mark is registered in respect of Class 35, protecting services of an advertising sentence used as a slogan for the marketing, use or exploitation of products in Classes 29, 30, 31, 32, 33 and 42; and that OHIM was aware of its own decision of 17 July 2006, in which it took into account the Guidelines for examination of slogan marks of the Spanish Patent and Trade Mark Office of 11 November 1997 (Annex 4), and the judgments of the Spanish Supreme Court of 25 February 2004 and 30 May 2008.

The appellant claims that requiring a party to plead and prove that the protection of its earlier mark extended to the same goods as those covered by the application constitutes a manifest error of assessment since it amounts to requiring identity in application. As a result, the incorrect assessment of the evidence and facts has left the main question unresolved: Article 8(1)(b) of Regulation 207/2009. ⁽¹⁾