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(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS AND BODIES

COURT OF JUSTICE

(2008/C 183/01)

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

OJ C 171, 5.7.2008

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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (First Chamber) of 5 June 2008 — Commission of the European Communities v French Republic

(Case C-226/06) [1]

(Failure of a Member State to fulfil obligations — Directive 89/391/EEC — Measures to encourage improvements in the safety and health of workers at work — Articles 2, 10(1) and 12(3) and (4) — Defective transposition)

(2008/C 183/02)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and I. Kaufmann-Bühler, acting as Agents)

Defendant: French Republic (represented by: G. de Bergues and C. Bergeot-Nunes, acting as Agents)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Articles 2, 10(1), and 12(3) and (4) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the provisions necessary to comply with Articles 2, 10(1), and 12(3) and (4) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, the French Republic has failed to fulfil its obligations under that directive;*

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

[1] OJ C 165, 15.7.2006.

Judgment of the Court (Grand Chamber) of 3 June 2008 (reference for a preliminary ruling from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)) — The Queen on the application of International Association of Independent Tanker Owners (Intertanko), International Association of Dry Cargo Shipowners (Intercargo), Greek Shipping Co-operation Committee, Lloyd's Register, International Salvage Union v Secretary of State for Transport

(Case C-308/06) [1]

(Maritime transport — Ship-source pollution — Directive 2005/35/EC — Validity — United Nations Convention on the Law of the Sea — Marpol 73/78 Convention — Legal effects of the Conventions — Ability to rely on them — Serious negligence — Principle of legal certainty)

(2008/C 183/03)

Language of the case: English

Referring court

High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court)

Parties to the main proceedings

Applicants: The Queen on the application of International Association of Independent Tanker Owners (Intertanko), International Association of Dry Cargo Shipowners (Intercargo), Greek Shipping Co-operation Committee, Lloyd's Register, International Salvage Union

Defendant: Secretary of State for Transport

Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) — Validity of Articles 4 and 5(1) and (2) of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11) — Community provisions having the effect of limiting a number of exceptions contained in an international convention (International Convention for the Prevention of Pollution from Ships (MARPOL Convention)) — Provisions imposing criminal penalties in situations in which an international convention (United Nations Convention on the Law of the Sea (UNCLOS)) does not impose any such penalties

Operative part of the judgment

1. *The validity of Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements cannot be assessed:*

   — *either in the light of the International Convention for the Prevention of Pollution from Ships, signed in London on 2 November 1973, as supplemented by the Protocol of 17 February 1978,*

   — *or in the light of the United Nations Convention on the Law of the Sea, signed in Montego Bay on 10 December 1982.*

2. *Examination of the fourth question has revealed nothing capable of affecting the validity of Article 4 of Directive 2005/35 in the light of the general principle of legal certainty.*

([1]) OJ C 261, 28.10.2006.

Judgment of the Court (Eighth Chamber) of 5 June 2008 (reference for a preliminary ruling from the Corte Suprema di Cassazione — Italy) — Industria Lavorazione Carni Ovine Srl v Regione Lazio

(Case C-534/06) ([1])

(Common agricultural policy — EAGGF — Article 13 of Regulation (EEC) No 866/90 — Exclusion of investments relating to the processing of products from third countries — Principle of proportionality)

(2008/C 183/04)

Language of the case: Italian

Referring court

Corte Suprema di Cassazione

Parties to the main proceedings

Applicant: Industria Lavorazione Carni Ovine Srl

Defendant: Regione Lazio

Re:

Reference for a preliminary ruling — Corte suprema di cassazione — Interpretation of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products (OJ 1990 L 91, p. 1) — Exclusion of investments in the marketing and/or processing of products from third countries — Exclusion in the case of investments which also concern products from Member States, complying with the specific programme under which the financing was obtained

Operative part of the judgment

On a proper construction of Article 13 of Council Regulation (EEC) No 866/90 of 29 March 1990 on improving the processing and marketing conditions for agricultural products, in circumstances such as those of the case in the main proceedings, payment of financial assistance is not excluded in cases of the marketing or processing of products including products originating beyond the territory of the Community, when the specific programme for which that financial assistance was granted has been observed, in so far as products originating within the Community have been marketed or processed in the quantities provided for.

([1]) OJ C 42, 24.2.2007.

Judgment of the Court (Second Chamber) of 5 June 2008 (reference for a preliminary ruling from the Tribunal de grande Instance de Nantes — Commission d'Indemnisation des Victimes d'infractions — France) — James Wood v Fonds de Garantie des victimes des actes de Terrorisme et d'autres Infractions

(Case C-164/07) ([1])

(Article 12 EC — Discrimination on grounds of nationality — Compensation awarded by the Fonds de garantie des victimes des actes de terrorisme et d'autres infractions — Not included)

(2008/C 183/05)

Language of the case: French

Referring court

Tribunal de Grande Instance de Nantes — Commission d'Indemnisation des Victimes d'infractions

Parties to the main proceedings

Applicant: James Wood

Defendant: Fonds de Garantie des victimes des actes de Terrorisme et d'autres Infractions

Re:

Reference for a preliminary ruling — Tribunal de grande instance de Nantes (France) — Commission d'Indemnisation des Victimes d'infractions — Interpretation of Article [12] of the EC Treaty — Compatibility, with regard to the general principle of non-discrimination, of national legislation which excludes a national of another Member State of the Union, lawfully residing in France and father of a child holding French nationality who died outside French territory, from the right to compensation paid by a Fonds de garantie, on the sole ground of his nationality

Operative part of the judgment

Community law precludes legislation of a Member State which excludes nationals of other Member States who live and work in its territory from the grant of compensation intended to make good losses resulting from offences against the person where the crime in question was not committed in the territory of that State, on the sole ground that they do not have the nationality of that State.

([1]) OJ C 129, 9.6.2007.

Judgment of the Court (First Chamber) of 5 June 2008 — Commission of the European Communities v Republic of Poland

(Case C-170/07) ([1])

(Failure of Member State to fulfil obligations — Internal taxation — Requirement for imported second-hand vehicles to undergo a roadworthiness test — Articles 28 EC and 30 EC — Directive 96/96/EC — Recognition of roadworthiness tests carried out in other Member States)

(2008/C 183/06)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: J. Hottiaux and K. Herrmann, acting as Agents)

Defendant: Republic of Poland (represented by: E. Osniecka-Tamecka, Agent)

Re:

Failure of a Member State to fulfil obligations — Breach of Article 28 EC — National legislation requiring imported second-hand vehicles to undergo a roadworthiness test prior to their registration, whereas domestic vehicles with the same characteristics are not subject to such a requirement

Operative part of the judgment

The Court:

1. *Declares that, by subjecting imported second-hand vehicles registered in other Member States to a roadworthiness test prior to their registration in Poland, the Republic of Poland has failed to fulfil its obligations under Article 28 EC;*

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

([1]) OJ C 183, 4.8.2007.

Judgment of the Court (Seventh Chamber) of 5 June 2008 (reference for a preliminary ruling from the Tribunal d'instance de Paris (France)) — JVC France SAS v Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)

(Case C-312/07) ([1])

(Common Customs Tariff — Tariff classification — Combined Nomenclature — Camcorders — Explanatory notes — Body of legal rules)

(2008/C 183/07)

Language of the case: French

Referring court

Tribunal d'instance de Paris

Parties to the main proceedings

Applicant: JVC France SAS

Defendant: Administration des douanes (Direction Nationale du Renseignement et des Enquêtes douanières)

Re:

Reference for a preliminary ruling — Tribunal d'instance de Paris (France) — Interpretation of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ 1987 L 256, p. 1), in the version applicable to the facts in the main proceedings — Subheadings 8525 40 91 (video camera recorders: Only able to record sound and images taken by the television camera) and 8525 40 99 (other) — Classification of camcorders which, when imported, are unable to record external video sound signals (DV out function) but the video interface of which can subsequently be activated through the use of software or an enabler (DV in/out), without the manufacturer and the seller having mentioned or endorsed that possibility — Whether it is possible to effect a change in Community practice with regard to tariff classification by way of subsequent retroactive amendments to the explanatory notes on the Combined Nomenclature rather than by means of the adoption of a regulation on tariff classification that would be applicable only in the future

Operative part of the judgment

1. *A camcorder may be classified under subheading 8525 40 99 of the Combined Nomenclature in Annex 1 to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff as amended by Commission Regulation (EC) No 2261/98 of 26 October 1998, Commission Regulation (EC) No 2204/1999 of 12 October 1999, Commission Regulation (EC) No 2388/2000 of 13 October 2000 and Commission Regulation (EC) No 2031/2001 of 6 August 2001 only if the function for recording images and sounds from sources other than the integrated camera or microphone is active at the time of customs clearance or if, even though the manufacturer did not intend to promote that characteristic, that function may be activated subsequently by simple modification of the apparatus by a user who does not have special skills, without modification of the camcorder's hardware. Where the camcorder is activated subsequently, it is also necessary, first, that, once activated, it functions in a manner similar to that of another camcorder whose function for recording images and sounds from sources other than the integrated camera or microphone is active at the time of customs clearance and, second, that it functions independently. The existence of those conditions must be capable of being ascertained at the time of customs clearance. It is for the national court to establish whether those conditions are fulfilled. If those conditions are not fulfilled the camcorder must be classified under subheading 8525 40 91 of the Combined Nomenclature.*

2. *The explanatory notes to that Combined Nomenclature relating to subheading 8525 40 99, published on 6 July 2001 and 23 October 2002, are interpretative in character and do not have legally binding force. They are in accordance with the wording of the Combined Nomenclature and do not alter its scope. It follows that the adoption of a new classification regulation was not necessary.*

([1]) OJ C 211, 8.9.2007.

Judgment of the Court (Eighth Chamber) of 5 June 2008 — Commission of the European Communities v Federal Republic of Germany

(Case C-395/07) ([1])

(Failure of a Member State to fulfil obligations — Directive 2004/48/EC — Enforcement of intellectual property rights — Failure to transpose within the prescribed period)

(2008/C 183/08)

Language of the case: German

Parties

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

Defendant: Federal Republic of Germany (represented by: M. Lumma, Agent)

Re:

Failure of a Member State to fulfil obligations — Failure to adopt, within the prescribed period, all the provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ 2004 L 157, p. 45, and — Corrigendum — OJ 2004 L 195, p. 16)

Operative part of the judgment

The Court:

1. *Declares that, by failing to adopt, within the period prescribed, all the provisions necessary to comply with Directive 2004/48/EC of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights, the Federal Republic of Germany has failed to fulfil its obligations under that directive;*

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

([1]) OJ C 247, 20.10.2007.

Judgment of the Court (Sixth Chamber) of 3 June 2008 — Commission of the European Communities v French Republic

(Case C-507/07) ([1])

(Failure of a Member State to fulfil obligations — Regulation (EC) No 6/2002 — Industrial and commercial property — Community designs — Article 80(2) — Failure to communicate the list of courts)

(2008/C 183/09)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: H. Krämer, Agent)

Defendant: French Republic (represented by: G. de Bergues and A. Hare, Agents)

Re:

Failure of a Member State to fulfil obligations — Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs (OJ 2002 L 3, p. 1) — Failure to communicate the list, provided for in Article 80(2) of the regulation referred to above, of Community design courts, indicating their names and their territorial jurisdiction.

Operative part of the judgment

1. *By not communicating to the Commission of the European Communities the list of Community design courts, the French Republic has failed to fulfil its obligations under Article 80(2) of Council Regulation (EC) No 6/2002 of 12 December 2001 on Community designs;*

2. *The French Republic is ordered to pay the costs.*

([1]) OJ C 8, 12.1.2008.

Request for an opinion submitted by the Commission of the European Communities pursuant to Article 300(6) EC

(Opinion 1/08)

(2008/C 183/10)

Language of the case: all the official languages

Applicant:

Commission of the European Communities (represented by: E. White, M. Huttunen and L. Prete, Agents)

Questions submitted to the Court:

1. Does the conclusion of the agreements with the affected WTO [World Trade Organisation] members, pursuant to Article XXI of the GATS [General Agreement on Trade in Services], as described in this request for an Opinion, fall within the sphere of exclusive competence of the Community or within the sphere of shared competence of the Community and the Member States?

2. Do Article 133(1) and (5), in conjunction with Article 300(2) of the EC Treaty, constitute the appropriate legal basis for the act concluding, on behalf of the European Community, or of the Community and its Member States, the aforementioned agreements?

Order of the Court of 14 May 2008 (reference for a preliminary ruling from the Cour d'appel de Bruxelles (Belgium)) — Tiercé Ladbroke SA (C-231/07) and Derby SA (C-232/07) v Belgian State

(Joined Cases C-231/07 and C-232/07) ([1])

(Rules of Procedure — First subparagraph of Article 104(3) — Sixth VAT Directive — Article 13(B)(d)(3) — Exemptions — Concepts of 'deposit accounts' and of 'payments' — Refusal of exemption)

(2008/C 183/11)

Language of the case: French

Referring court

Cour d'appel de Bruxelles (Belgium)

Parties

Applicants: Tiercé Ladbroke SA and Derby SA

Defendant: Belgian State

Re:

Reference for a preliminary ruling — Cour d'appel de Bruxelles (Belgium) — Interpretation of Article 13(B)(d)(3) 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) — Exemption in relation to transactions, including negotiation, concerning deposit accounts and payments — Bets, lotteries and other games of chance or forms of gambling — Supply of services by buralistes responsible for collecting the bets on behalf of a principal and, where appropriate, for paying out winnings to bettors — Whether eligible for the exemption provided for in Article 13(B)(d)(3)

Operative part of the order

The terms 'transactions, including negotiation, concerning deposit accounts and payments' used in Article 13(B)(d)(3) 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 are to be interpreted as meaning that they do not refer to the supply of services by an agent acting on behalf of a client which carries out the activity of accepting bets on horse races and other sporting events, consisting of acceptance by the agent of bets on behalf of the client, registration thereof, confirmation to the client, by presentation of the betting slip, that a bet was made, collection of funds, payment of winnings, sole assumption of liability as regards the client for management of the funds collected and for thefts and/or losses of money and receipt of remuneration in the form of commission from the client as remuneration for that activity.

([1]) OJ C 170, 21.7.2007.

Action brought on 10 August 2007 — Hervé Raulin v French Republic

(Case C-454/07)

(2008/C 183/12)

Language of the case: French

Parties

Applicant: Hervé Raulin (represented by: C. Vaucois, avocat)

Defendant: French Republic

By order of 16 May 2008, the Court (Fifth Chamber) declared that it clearly had no jurisdiction to decide the action and ordered the applicant to bear his own costs.

Action brought on 7 February 2008 — Sandra Raulin v French Republic

(Case C-49/08)

(2008/C 183/13)

Language of the case: French

Parties

Applicant: Sandra Raulin (represented by: C. Vaucois, avocat)

Defendant: French Republic

By order of 16 May 2008 the Court (Fifth Chamber) declared that it clearly had no jurisdiction to give a ruling on the action and ordered Mrs Raulin to pay her own costs.

Reference for a preliminary ruling from the Fővárosi Bíroság (Hungarian Republic) lodged on 2 April 2008 — LIDL Magyarország Kereskedelmi Bt. v Nemzeti Hírközlési Hatóság Tanácsa

(Case C-132/08)

(2008/C 183/14)

Language of the case: Hungarian

Referring court

Fővárosi Bíroság

Parties to the main proceedings

Applicant: LIDL Magyarország Kereskedelmi Bt.

Defendant: Nemzeti Hírközlési Hatóság Tanácsa

Questions referred

1. Can Article 8 of Directive 1999/5/EC ([1]) of the European Parliament and of the Council be interpreted as meaning that no obligations apart from those concerning the free movement of radio equipment and telecommunications terminal equipment ('equipment') in the directive may be laid down as regards the marketing of equipment which falls within the scope of the directive and which has had the CE mark affixed by its producer, established in another Member State?

2. Can Article 2(e) and (f) of Directive 2001/95/EC ([2]) of the European Parliament and of the Council be interpreted, as regards obligations relating to marketing, as meaning that an entity may also be regarded as a producer if it markets equipment in a Member State (without being involved in the manufacture of the equipment) and is established in a Member State other than the one where the producer is established?

3. Can Article 2(e)(i), (ii) and (iii), and (f) of Directive 2001/95/EC of the European Parliament and of the Council be interpreted as meaning that the distributor of equipment manufactured in another Member State (who is not the same person as the producer) can be required to issue a declaration of conformity setting out the technical data relating to the equipment?

4. Can Article 2(e)(i), (ii) and (iii), and (f) of Directive 2001/95/EC of the European Parliament and of the Council be interpreted as meaning that an entity which carries out only distribution in one Member State and is established in that State, must also be regarded as the producer of the distributed equipment where the activity of the distributor does not affect the safety characteristics of the equipment?

5. Can Article 2(f) of Directive 2001/95/EC of the European Parliament and of the Council be interpreted as meaning that the distributor as defined in the directive can be required to fulfil the obligations which under the directive are required only of the producer as defined in Article 2(e), such as the issuing of a declaration of conformity as regards technical conditions?

6. Can Article 30 EC (ex-Article 36 EEC) and the so-called mandatory requirements justify an exception to the application of the Dassonville formula, having regard to the principles of equivalence and mutual recognition?

7. Can Article 30 EC (ex-Article 36 EEC) be interpreted as meaning that trade in and import of goods in transit cannot be restricted for any reason other than those listed there?

8. Is the CE mark sufficient to satisfy the principle of equivalence or the principle of mutual recognition and the conditions of Article 30 EC (ex-Article 36 EEC)?

9. Can the CE mark be interpreted as meaning that Member States are not justified in applying any other technical provisions or provisions regarding quality to equipment bearing the mark?

10. Can the provisions of Article 6(1) and of the second sentence of Article 8(2) of Directive 2001/95/EC of the European Parliament and of the Council be interpreted as meaning that, for the purposes of marketing of goods, the producer and the distributor can be considered to be subject to the same obligations, where the producer does not market the products?

([1]) Directive 1999/5/EC of the European Parliament and of the Council of 9 March 1999 on radio equipment and telecommunications terminal equipment and the mutual recognition of their conformity (OJ 1999 L 91, p. 10).
([2]) Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ 2002 L 11, p. 4).

Reference for a preliminary ruling from the Budapesti II. és III Kerületi Bíróság (Republic of Hungary) lodged on 7 April 2008 — VB Pénzügyi Lízing Zrt. v Ferenc Schneider

(Case C-137/08)

(2008/C 183/15)

Language of the case: Hungarian

Referring court

Budapesti II. és III Kerületi Bíróság (Hungary)

Parties to the main proceedings

Applicant: VB Pénzügyi Lízing Zrt.

Defendant: Ferenc Schneider

Questions referred

1. Does the consumer protection guaranteed by Council Directive 93/13/EEC of 5 April 1993 ([1]) on unfair terms in consumer contracts require that — irrespective of the type of proceedings and whether they are *inter partes* or not — in the context of the review of their own competences, the national courts are to assess, of their own motion, the unfair nature of a contractual term before them even if not specifically requested to do so?

2. If Question 1 is to be answered in the affirmative, what criteria may the national courts take into account in the context of that review, in particular in the case that the contractual term does not grant jurisdiction to the judicial body corresponding to the registered office of the service provider, but to a different judicial body which is located close to that registered office?

3. Pursuant to the first paragraph of Articl 23 of the Protocol on the Statute of the Court of Justice annexed to the Treaty on European Union, the Treaty establishing the European Community and the Treaty establishing the European Atomic Energy Community, is the possibility precluded for the national courts to inform the Ministry of Justice of their own Member State that a reference for a preliminary ruling has been made at the same time as making that reference?

([1]) OJ 1993 L 95, p. 29.

Reference for a preliminary ruling from the Fővárosi Ítélőtábla (Hungary) lodged on 7 April 2008 — Hochtief AG, Linde-Kca-Dresden GmbH v Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

(Case C-138/08)

(2008/C 183/16)

Language of the case: Hungarian

Referring court

Fővárosi Ítélőtábla (Hungary)

Parties to the main proceedings

Applicant: Hochtief AG, Linde-Kca-Dresden GmbH

Defendant: Közbeszerzések Tanácsa Közbeszerzési Döntőbizottság

Intervener: Budapest Főváros Önkormányzata

Questions referred

1. Is the procedure laid down in Article 44(3) of Directive 2004/18/EC, which replaced Article 22 of Council Directive 93/37/EEC ([1]) concerning the coordination of procedures for the award of public works contracts, applicable where the procurement procedure was initiated at a time when Directive 2004/18/EC ([2]) had already entered into force, but the time-limit granted to Member States for implementing that directive had not yet expired, so that the directive had not been incorporated into national law?

2. If the answer to the first question is in the affirmative, this court further asks whether, in the case of negotiated procedures with publication of a contract notice, — having regard to the fact that Article 44(3) of Directive 2004/18/EC provides that '[i]n any event the number of candidates invited shall be sufficient to ensure genuine competition' — the limitation of the number of suitable candidates should be interpreted as meaning that in the second stage — that of awarding the contract — there must invariably be a minimum number of candidates (three)?

3. If the answer to the first question is in the negative, this court further asks the Court of Justice whether the requirement that 'there be a sufficient number of suitable candidates', under Article 22(3) of Council Directive 93/37/EEC concerning the coordination of procedures for the award of public works contracts ('Directive 93/37'), should be interpreted as meaning that where the minimum number of suitable candidates invited to take part is not reached (three), the procedure cannot continue to the stage of invitation to tender?

4. If the Court of Justice replies to the third question in the negative, this court further asks whether the second paragraph of Article 22(2) of Directive 93/37 — in the rules on restricted procedures, according to which '[i]n any event, the number of candidates invited to tender shall be sufficient to ensure genuine competition' — is applicable to two-stage negotiated procedures, governed by Article 22(3)?

([1]) OJ 1993 L 199, p. 54.
([2]) OJ 2004 L 134, p. 114.

Reference for a preliminary ruling from the Oberlandesgericht Karlsruhe (Germany) lodged on 7 April 2008 — Criminal proceedings against Rafet Kqiku

(Case C-139/08)

(2008/C 183/17)

Language of the case: German

Referring court

Oberlandesgericht Karlsruhe

Parties to the main proceedings

Applicants:

1. Generalstaatsanwaltschaft Karlsruhe

2. Staatsanwaltschaft Konstanz

Defendant: Rafet Kqiku

Questions referred

Are the provisions of Articles 1 and 2 of Decision No 896/2006/EC of the European Parliament and of the Council of 14 June 2006 establishing a simplified regime for the control of persons at the external borders based on the unilateral recognition by the Member States of certain residence permits issued by Switzerland and Liechtenstein for the purpose of transit through their territory ([1]) to be interpreted as meaning that the residence permits issued by the Swiss Confederation and Liechtenstein listed in the Annex acquire, by virtue of the unilateral recognition by the Member States fully implementing the Schengen acquis of those residence permits as equivalent to their uniform or national visas, directly the effect of a residence document allowing transit through the common area;

Or

are the provisions of Articles 1 and 2 of Decision No 896/2006/EC to be interpreted as meaning that third-country nationals holding one of the residence permits issued by the Swiss Confederation and Liechtenstein listed in the Annex unilaterally recognised by the Member States fully implementing the Schengen acquis are exempt, for the purpose of transit through the common area, from the requirement to be in possession of a visa under Article 1(1) of Regulation (EC) No 539/2001?

([1]) OJ 2006 L 167, p. 8.

Reference for a preliminary ruling from the Niedersächsischen Finanzgericht (Germany) lodged on 16 April 2008 — Monika Vollkommer v Finanzamt Hannover-Land I

(Case C-156/08)

(2008/C 183/18)

Language of the case: German

Referring court

Niedersächsischen Finanzgericht

Parties to the main proceedings

Applicant: Monika Vollkommer

Defendant: Finanzamt Hannover-Land I

Question referred

Is the imposition of German real property transfer tax on future building work as a result of its inclusion in the taxable amount for real property transfer tax on the purchase of a plot of land not yet built on (so-called single supply consisting of building work and purchase of land) contrary to the prohibition on multiple taxation in Article 401 of the Directive on the common system of value added tax ([1]) (formerly Article 33(1) of the Sixth Directive) ([2]) where the building work subject to real property transfer tax is also subject to German turnover tax as an independent supply?

([1]) OJ L 347, p. 1.
([2]) OJ L 145, p. 1.

Reference for a preliminary ruling from the Hof van beroep te Antwerp (Belgium) lodged on 18 April 2008 — Internationaal Verhuis- en Transportbedrijf Jan de Lely v Belgische Staat

(Case C-161/08)

(2008/C 183/19)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Internationaal Verhuis- en Transportbedrijf Jan de Lely

Respondent: Belgische Staat

Questions referred

(1) Must Article 2(1) of Commission Regulation (EEC) No 1593/91 ([1]) of 12 June 1991, read in conjunction with Article 11(1) of the Convention of 14 November 1975 on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), be interpreted as meaning that the period laid down in Article 11(1) of the TIR Convention applies only for the benefit of the guaranteeing organisation, but not for that of the carnet holder, and that exceeding the period of one year from the date of acceptance of the TIR carnet in respect of the carnet holder affects entitlement to recover the customs debt or the excise duties and special excise duties and the liability for payment, and that exceeding the period of one year prejudices the right of the competent customs authorities to proceed to recovery of that debt?

(2) Must Article 2(2) and (3) of Commission Regulation (EEC) No 1593/91 of 12 June 1991, read in conjunction with Article 11(1) and (2) of the Convention of 14 November 1975 on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), be interpreted as meaning that the period laid down therein applies only for the furnishing of proof as to the regularity of the transport operation, but not for the furnishing of proof as to the place where the offence or irregularity was committed?

(3) Must Article 2(2) and (3) of Commission Regulation (EEC) No 1593/91 of 12 June 1991, read in conjunction with Article 11(1) and (2) of the Convention of 14 November 1975 on the International Transport of Goods under Cover of TIR Carnets (TIR Convention), be interpreted as meaning that, in so far as the period laid down therein also applies for the furnishing of proof as to the place where the offence or irregularity was committed, that period is not a strict period and that the carnet holder may still furnish that proof even after that period has expired?.

(1) Commission Regulation (EEC) No 1593/91 of 12 June 1991 providing for the implementation of Council Regulation (EEC) No 719/91 on the use in the Community of TIR carnets and ATA carnets as transit documents (OJ 1991 L 148, p. 11).

Action brought on 17 April 2008 — Commission of the European Communities v Republic of Poland

(Case C-165/08)

(2008/C 183/20)

Language of the case: Polish

Parties

Applicant: Commission of the European Communities (represented by: B. Doherty and A. Szmytkowska, Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by introducing a ban on the free movement of seed derived from genetically modified varieties and by prohibiting the registration of genetically modified varieties in the national catalogue of varieties, the Republic of Poland has failed to comply with its obligations under Directive 2001/18/EC of the European Parliament and of the Council (1) in its entirety, and in particular pursuant to Articles 22 and 23 thereof, as well as its obligations under Council Directive 2002/53/EC (2), and in particular Articles 4(4) and 16 thereof;

— order the Republic of Poland to pay the costs of the proceedings.

Pleas in law and main arguments

The national provision stating that 'seed derived from genetically modified varieties may not be authorised for marketing within the territory of the Republic of Poland' is at variance with Directive 2001/18/EC, which lays down the principles governing the bringing onto the market of genetically modified organisms. Article 22 of that directive prohibits the Member States from imposing additional conditions on the marketing of organisms which have been authorised at Community level, while Article 23 of the directive provides for restrictions and prohibitions only in the case of particular genetically modified organisms and only in special circumstances. In none of its provisions does the directive authorise a Member State to prohibit, in a general and unjustified manner, the marketing, within its territory, of an entire category (in this case, seed) of genetically modified organisms. The aforementioned provision is also at variance with Directive 2002/53/EC, in particular Article 16 thereof, inasmuch as it constitutes a marketing restriction in relation to seed derived from varieties listed in the common catalogue of varieties of agricultural plant species.

The national provision stating that 'genetically modified varieties may not be registered in the national catalogue' is at variance with Directive 2002/53/EC. Article 4(4) of that directive does not authorise Member States to prohibit generally the registration of genetically modified varieties in the national catalogue, but rather imposes on them solely the obligation to ensure, when such varieties are being entered in the national catalogue, that each of those varieties had been approved in accordance with the Community legislation applicable to genetically modified organisms.

(1) OJ L 106, 17.4.2001, p. 1-39.
(2) OJ L 193, 20.7.2002, p. 1-11.

Reference for a preliminary ruling from the Amtsgericht Büdingen (Germany) lodged on 18 April 2008 — Criminal proceedings against Guido Weber

(Case C-166/08)

(2008/C 183/21)

Language of the case: German

Referring court

Amtsgericht Büdingen

Parties to the main proceedings

Prosecutor: Staatsanwaltschaft b.d. LG Gießen

Defendant: Guido Weber

Question referred

Is the second sentence of Article 7(1) of Council Directive 89/397/EEC of 14 June 1989 on the official control of foodstuffs ([1]) to be interpreted, with regard to the expression 'those subject to inspection', as applying not only to the manufacturer of the foodstuff but also to the person marketing it, to the extent that the latter is to be held responsible by the prosecuting authorities for the condition and labelling of the foodstuff in proceedings relating to the imposition of criminal penalties or administrative fines?

([1]) OJ 1989 L 186, p. 23.

Reference for a preliminary ruling from the Hof van Cassatie van België lodged on 21 April 2008 — Draka NK Cables Ltd, AB Sandvik International, VO Sembodja BV and Parc Healthcare International Limited v Omnipol Ltd

(Case C-167/08)

(2008/C 183/22)

Language of the case: Dutch

Referring court

Hof van Cassatie van België

Parties to the main proceedings

Applicant: Draka NK Cables Ltd, AB Sandvik International, VO Sembodja BV and Parc Healthcare International Limited

Defendant: Omnipol Ltd

Question referred

Is a creditor who pursues a claim in the name and for the account of his debtor a party within the meaning of Article 43(1) of Regulation No 44/2001 ([1]), that is, a party who can lodge an appeal against a decision on the request for declaration of enforceability, even if he has not formally appeared as a party in the proceedings in which another creditor of that debtor applied for that declaration?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Commissione Tributaria Provinciale di Roma (Italy) lodged on 25 April 2008 — Pontina Ambiente Srl v Regione Lazio

(Case C-172/08)

(2008/C 183/23)

Language of the case: Italian

Referring court

Commissione Tributaria Provinciale di Roma

Parties to the main proceedings

Applicant: Pontina Ambiente Srl

Defendant: Regione Lazio

Question referred

Is Article 3(26) and (31) of Law No 549/95 incompatible with Articles 12, 14, 43 and 46 of the EEC Treaty and with Directives 35/2000/EC ([1]) and 31/1999/EC ([2]), with reference in particular to the principles laid down in the preamble to Directive 35/2000/EC and Article 10 of Directive 31/1999/EC, according to which, in particular, the Member States are required to prevent situations of inequality throughout the Community market by adopting provisions to combat late payments in order to prohibit abuse of freedom of contract to the disadvantage of the creditor where the principal purpose of a contract is to procure the debtor additional liquidity at the expense of the creditor and by making provision for compensation for the loss suffered by the creditor in the event of late payment by the debtor?

([1]) OJ 2000 L 200, p. 35.
([2]) OJ 1999 L 182, p. 1.

Reference for a preliminary ruling from the Gerechtshof te Amsterdam (The Netherlands) lodged on 25 April 2008 — Kloosterboer Services B.V. v Inspecteur van de Belastingdienst/Douane Rotterdam, kantoor Laan op Zuid

(Case C-173/08)

(2008/C 183/24)

Language of the case: Dutch

Referring court

Gerechtshof te Amsterdam (The Netherlands)

Parties to the main proceedings

Applicant: Kloosterboer Services B.V.

Defendant: Inspecteur van de Belastingdienst/Douane Rotterdam, kantoor Laan op Zuid

Questions referred

1. Is Commission Regulation (EC) No 384/2004 ([1]) of 1 March 2004 concerning the classification of certain goods in the Combined Nomenclature valid in so far as, according to that Regulation, subheading 8414 59 30 of the Common Nomenclature covers the goods described in paragraph 2.7 ([2]) above?

2. If the Regulation is invalid, can the Common Customs Tariff then be interpreted to mean that those goods should be classified as 'parts and accessories of the machines of heading 8471' as referred to in subheading 8473 30 90 of the CN?

([1]) OJ L 64, p. 21.
([2]) The products consist of two elements: a 'heat sink' (heat exchanger) and a fan, which are durably attached to each other to form a whole.

Reference for a preliminary ruling from the Hoge Raad der Nederlanden, lodged on 8 May 2008 — Zuid-Chemie B.V. v Philippo's Mineralenfabriek N.V./S.A., at present PMF Productions

(Case C-189/08)

(2008/C 183/25)

Language of the case: Dutch

Referring court

Hoge Raad der Nederlanden

Parties to the main proceedings

Appellant: Zuid-Chemie B.V.

Respondent: Philippo's Mineralenfabriek N.V./S.A.

Questions referred

(a) Which harm is, in the case of unlawful conduct such as that which forms the basis for Zuid-Chemie's claim, to be treated as the initial harm resulting from that conduct: the harm which arises by virtue of the delivery of the defective product or the harm which arises when normal use is made of the product for the purpose for which it was intended?

(b) If the latter is the case, can then the place where that harm arose be treated as 'the place where the harmful event occurred' within the meaning of Article 5(3) of Council Regulation (EC) No 44/2001 ([1]) of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters only if that harm consists of physical harm to persons or goods, or is this also possible if (initially) only financial harm has been incurred?

([1]) Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ 2001 L 12, p. 1).

Reference for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 14 May 2008 — Landwirtschaftsamt (German Agricultural Office) v Hermann Fischer, Rolf Schlatter and the Regierungspräsidium Freiburg

(Case C-193/08)

(2008/C 183/26)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Hermann Fischer, Rolf Schlatter and the Regierungspräsidium Freiburg

Question referred

Must Article 15(1) of Annex I to the Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons be interpreted as meaning that, as regards access to a self-employed activity and the pursuit thereof, only self-employed persons within the meaning of Article 12(1) of Annex I to the agreement are to be afforded no less favourable treatment in the host country than that accorded to its own nationals, or does this also apply to self-employed frontier workers within the meaning of Article 13(1) of Annex I to the agreement ([1])?

([1]) OJ 2002 L 114, p. 6.

Action brought on 14 May 2008 — Commission of the European Communities v French Republic

(Case C-197/08)

(2008/C 183/27)

Language of the case: French

Parties

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

Defendant: French Republic

Form of order sought

— Declare that, by adopting and maintaining in force a system of minimum prices for cigarettes sold in France, despite a prohibition on the sale of tobacco products 'at a promotional price contrary to the aims of public health', the French Republic has failed to fulfil its obligations under Article 9(1) of Directive 95/59/EC ([1]);

— order the French Republic to pay the costs.

Pleas in law and main arguments

The applicant submits that Article 9(1) of Directive 95/59/EC, as interpreted by the Court, clearly prohibits the intervention of the Member States in imposing, in a discretionary manner, minimum prices for the retail sale of manufactured tobacco products. Since they prevent manufacturers and importers from other countries from freely determining the maximum retail selling price of each of their products, such minimum prices restrict price competition and harm the internal market.

Furthermore, with regard to the need alleged by the defendant to derogate from the above provision in order to protect public health, the Commission does not dispute that, in certain circumstances, it may be necessary to derogate from the provisions of the EC Treaty concerning free movement of goods in order to achieve that objective. However, in the present case, as the Court has already held, the objective of protecting public health can adequately be pursued by way of increased taxation on manufactured tobacco products, which preserves the principle of free determination of prices.

([1]) Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (OJ L 291, p. 40).

Reference for a preliminary ruling from the Hessische Finanzgericht, Kassel (Germany) lodged on 16 May 2008 — Plantanol GmbH & Co. KG v Hauptzollamt Darmstadt

(Case C-201/08)

(2008/C 183/28)

Language of the case: German

Referring court

Hessische Finanzgerichts, Kassel

Parties to the main proceedings

Applicant: Plantanol GmbH & Co.KG

Defendant: Hauptzollamt Darmstadt

Questions referred

1. Is a national provision such as Paragraph 50(1)(1) of the Energy Tax Law (Energiesteuergesetz), as amended by the Biofuel Quota Law (Biokraftstoffquotengesetz) of 18 December 2006, which does not accord an advantage to that part of a fuel blend consisting of a biofuel composed of vegetable oil meeting the DIN V 51605 standard (as it stood in July 2006) contrary to Directive 2003/30/EC of the European Parliament and of the Council of 8 May 2003 on the promotion of the use of biofuels or other renewable fuels for transport (Biofuel Directive) ([1]), particularly in the light of recitals 10, 12, 14, 19, 22 and 27 therein?

2. Does the Community law principle of legal certainty and protection of legitimate expectations require that it should be permissible only in wholly exceptional circumstances for a Member State which adopts rules for the implementation of that directive and, in doing so, has established a promotion scheme consisting of tax advantages spread over several years, to amend that scheme, during the time-limit laid down, to the disadvantage of an undertaking which previously enjoyed an advantage?

([1]) OJ L 123, p. 42.

Appeal brought on 21 May 2008 by Sebirán, SL against the judgment delivered on 12 March 2008 in Case T-332/04 Sebirán, SL v OHIM and El Coto de Rioja, SA

(Case C-210/08 P)

(2008/C 183/29)

Language of the case: Spanish

Parties

Appellant: Sebirán, SL (represented by: J. Calderón Chavero and T. Villate Consonni)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs) and El Coto de Rioja, SA

Form of order sought

— Annulment of the judgment of the Court of First Instance (Fourth Chamber) of 12 March 2008 in Case T-332/04 on the ground that the trade marks EL COTO/COTO DE IMAZ, on the one hand, and COTO D'ARCIS, on the other, are clearly compatible;

— Order for payment of costs.

Pleas in law and main arguments

Challenge to the assessment of the Court of First Instance: Sebirán considers that the Community trade mark COTO D'ARCIS does not infringe the prohibition of Article 8(1)(b) of Regulation No 40/94 [1] since upon opposition of the proprietor of an earlier mark, in this case the Community marks EL COTO and COTO DE IMAZ, the refusal to register the most recent is not appropriate because it is sufficiently dissimilar, for the purposes of that prohibition, to the earlier marks, notwithstanding that the goods or services covered by both marks are identical or similar, considering the whole and not the separate components, when in addition there is no possibility of a likelihood of confusion on the part of the public of the whole territory of the European Union. The likelihood of confusion does not include the risk of association with the earlier mark.

[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 22 May 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-219/08)

(2008/C 183/30)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and J.-P. Keppenne, Agents)

Defendant: Kingdom of Belgium

Form of order sought

— declare that, by requiring, in the event that workers who are nationals of third countries are posted by Community undertakings in the framework of a provision of services:

(a) authorisation prior to the exercise of the economic activity;

(b) that the residence permit issued in the State in which the employer is established must be valid three months beyond the end of the service provided;

(c) that a worker must have been in the service of the same employer providing the services for at least sixth months;

the Kingdom of Belgium has failed to fulfil its obligations under Article 49 EC.

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The Commission claims, in essence, that the requirements imposed by the defendant in the event that workers who are nationals of third countries are posted by providers of services established in a Member State other than Belgium restrict the free provision of services and at the same time discriminate against those providers in relation to their competitors established in Belgium.

By its first complaint, the Commission claims that the system of authorisation prior to the exercise of an economic activity represents a disproportionate obstacle to the free provision of services. That obstacle cannot moreover be justified by any reason of general interest, or by reference to the rules of the Schengen acquis.

By its second complaint, the applicant calls in question the disproportionate nature of the requirement that the residence permit issued in the Member State in which the employer is established must be valid three months beyond the end of the service provided.

By its third complaint, the Commission states that despite the positive legislative amendments effected by the defendant, the requirement that a worker must have been in the service of the same employer providing the services for at least six months represents an unjustified restriction on the free provision of services.

Action brought on 22 May 2008 — Commission of the European Communities v Hellenic Republic

(Case C-220/08)

(2008/C 183/31)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: M. Condou-Durande, acting as Agent)

Defendant: Hellenic Republic

Form of order sought

— declare that, by not adopting the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/83/EC ([1]) of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, or in any event by not notifying those provisions to the Commission, the Hellenic Republic has failed to fulfil its obligations under Article 38 of that directive;

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of Directive 2004/83 into domestic law expired on 10 October 2006.

([1]) OJ L 304, 30.9.2004, p. 12.

Action brought on 30 May 2008 — Commission of the European Communities v Ireland

(Case C-234/08)

(2008/C 183/32)

Language of the case: English

Parties

Applicant: Commission of the European Communities (represented by: H. Støvlbæk, Agent)

Defendant: Ireland

The applicants claims that the Court should:

— declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC ([1]), of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania, or in any event by failing to communicate them to the Commission, Ireland has failed to fulfil its obligations under the Directive,

— order Ireland to pay the costs.

Pleas in law and main arguments

The period within which the directive had to be transposed expired on 1 January 2007.

([1]) OJ L 363, p. 141.

Action brought on 2 June 2008 — Commission of the European Communities v Kingdom of Belgium

(Case C-239/08)

(2008/C 183/33)

Language of the case: French

Parties

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

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 Council Directive 2006/100/EC of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania ([1]), or, in any event, by not informing the Commission thereof, the Kingdom of Belgium has failed to fulfil its obligations under Article 2 of that directive;

— order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

The time-limit for transposing Directive 2006/100/EC expired on the date of accession of Bulgaria and Romania to the European Union, namely on 1 January 2007. At the time the action was brought, all the measures necessary to transpose the directive had not yet been taken or communicated to the Commission by the defendant.

([1]) OJ 2006 L 363. p. 141.

Action brought on 2 June 2008 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-240/08)

(2008/C 183/34)

Language of the case: French

Parties

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

Defendant: Grand Duchy of Luxembourg

Form of order sought

— Declare that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2006/22/EC of the European Parliament and of the Council of 15 March 2006 on minimum conditions for the implementation of Council Regulations (EEC) No 3820/85 and (EEC) No 3821/85 concerning social legislation relating to road transport activities and repealing Council Directive 88/599/EEC ([1]) or, in any event, by not informing the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

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

Pleas in law and main arguments

The time-limit for transposing Directive 2006/22/EC expired on 1 April 2007. At the time the action was brought, the defendant had still not taken the measures necessary to transpose the directive or, in any event, had not informed the Commission thereof.

([1]) OJ 2006 L 102, p. 35.

Action brought on 4 June 2008 — Commission of the European Communities v Portuguese Republic

(Case C-245/08)

(2008/C 183/35)

Language of the case: Portuguese

Parties

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

Defendant: Portuguese Republic

Form of order sought

— Declare that by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Council Directive 2006/100/EC ([1]) of 20 November 2006 adapting certain Directives in the field of freedom of movement of persons, by reason of the accession of Bulgaria and Romania, or, in any event, by not informing the Commission thereof, the Portuguese Republic has failed to fulfil its obligations under Article 2 of that directive;

— order the Portuguese Republic to pay the costs.

Pleas in law and main arguments

The time-limit for transposition of the directive expired on 1 January 2007.

([1]) OJ 2006 L 363, p. 141.

COURT OF FIRST INSTANCE

Judgment of the Court of First Instance of 10 June 2008 — Ceuninck v Commission

(Case T-282/03) [1]

(Staff cases — Officials — Appointment — Post of adviser to OLAF — Rejection of candidature — Powers of the Director-General of OLAF — Validity of vacancy notice — Breach of the rules for appointing officials in Grades A4 and A5 — Misuse of powers — Manifest error of assessment)

(2008/C 183/36)

Language of the case: French

Parties

Applicant: Paul Ceuninck (Hertsberge, Belgium) (represented by: initally G. Vandersanden and A. Finchelstein, then G. Vandersanden and L. Levi, lawyers)

Defendant: Commission of the European Communities (represented by: V. Joris and C. Berardis-Kayser, Agents)

Re:

First, an application for annulment of Vacancy Notice COM/051/02 and of the entire procedure pursuant to that notice and, second, an application for annulment of the decision appointing Ms S taken by the Appointing Authority on 13 September 2002 and of the implied decision rejecting the applicant's candidature.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Mr. Paul Ceuninck and the Commission to bear their own costs.*

[1] OJ C 251 of 18.3.2004.

Judgment of the Court of First Instance of 10 June 2008 — Marcuccio v Commission

(Case T-18/04) [1]

(Social Security — Application for assumption of responsibility for medical expenses — Implied rejection of the application)

(2008/C 183/37)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: initially A. Distante, then G. Cipressa, lawyers)

Defendant: Commission of the European Communities (represented by: C. Berardis-Kayser and J. Curral, Agents, assisted by A. Dal Ferro, lawyer)

Re:

First, an application for annulment of the Appointing Authority's implied decision rejecting the applicant's application of 25 November 2002 for reimbursement of 100 % of medical expenses under Article 72 of the Staff Regulations of Officials of the European Communities, secondly, an application for annulment of the implied decision rejecting the applicant's complaint against the rejection of the application of 25 November 2002, thirdly, an application for a declaration of the applicant's entitlement, under Article 72 of the Staff Regulations, to reimbursement of 100 % of the medical expenses incurred in the treatment for the diseases from which he suffered and, fourthly, an application for an order that the Commission pay 100 % of those medical expenses.

Operative part of the judgment

The Court:

1. *Annuls the implied rejection of the application of 25 November 2002;*

2. *Dismisses the remainder of the action;*

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

[1] OJ C 71 of 20.3.2004.

Judgment of the Court of First Instance (First Chamber) of 5 June 2008 — Internationaler Hilfsfonds v Commission

(Case T-141/05) ([1])

(Action for annulment — Access to documents — Regulation (EC) No 1049/2001 — Partial refusal — Non-actionable measure — Merely confirmatory measure — Inadmissibility)

(2008/C 183/38)

Language of the case: German

Parties

Applicant: Internationaler Hilfsfonds eV (Rosbach, Germany) (represented by: H. Kaltenecker, lawyer)

Defendant: Commission of the European Communities (represented by: P. Costa de Oliveira, S. Fries and C. Ladenburger, Agents)

Re:

Application for annulment of the so-called decision contained in the letter of the Commission of 14 February 2005 refusing the applicant access to certain documents from the file regarding the contract LIEN 97-2011.

Operative part of the judgment

The Court:

1. *Dismisses the action as inadmissible;*

2. *Orders Internationaler Hilfsfonds to pay its own costs and those of the Commission.*

([1]) OJ C 143 of 11.6.2005.

Judgment of the Court of First Instance of 10 June 2008 — Novartis v OHIM (BLUE SOFT)

(Case T-330/06) ([1])

(Community trade mark — Application for Community word mark BLUE SOFT — Absolute grounds for refusal — Descriptive nature — Lack of distinctive nature — Article 7(1)(b) and (c) of Regulation No 40/94)

(2008/C 183/39)

Language of the case: German

Parties

Applicant: Novartis AG (Basel, Switzerland) (represented by: N. Hebeis, lawyer)

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 14 September 2006 (Case R 270/2006-1) concerning an application for registration of the word mark BLUE SOFT as a Community trade mark

Operative part of the judgment

The Court:

1. *Dismisses the action;*

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

([1]) OJ C 326, 31.12.2006.

Judgment of the Court of First Instance of 10 June 2008 — Gabel Industria Tessile SpA v OHIM — Creaciones Garel (GABEL)

(Case T-85/07) ([1])

(Community trade mark — Opposition proceedings — Application for the Community word mark GABEL — Earlier Community figurative mark GAREL — Partial refusal of registration — Scope of the examination to be carried out by the Board of Appeal — Obligation to rule on the entirety of the action — Article 62(1) of Regulation (EC) No 40/94)

(2008/C 183/40)

Language of the case: Italian

Parties

Applicant: Gabel Industria Tessile SpA (Rovellasca, Italy) (represented by: A. Petruzzelli, lawyer)

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

Other party to the proceedings before the Board of Appeal of OHIM: Creaciones Garel, SA. (Logroño, Spain)

Re:

ACTION brought against the decision of the Second Board of Appeal of OHIM of 25 January 2007 (Case R 960/2006-2), relating to opposition proceedings between Creaciones Garel, SA, and Gabel Industria Tessile SpA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 25 January 2007 (Case R 960/2006-2).*

2. *Dismisses the action as to the remainder.*

3. *Orders Gabel Industria Tessile SpA and OHIM each to bear their own costs.*

([1]) OJ C 117, 26.5.2007.

Order of the Court of First Instance of 2 June 2008 — WWF-UK v Council

(Case T-91/07) ([1])

(Action for annulment — Regulation (EC) No 41/2007 — Recovery of cod stocks — Setting of the TACs for 2007 — Measure of general application — Not affected individually — Inadmissibility)

(2008/C 183/41)

Language of the case: English

Parties

Applicant: WWF-UK (Godalming, Surrey, United Kingdom) (represented by: M.R. Stein, Solicitor, P. Sands and J. Simor, Barristers)

Defendant: Council of the European Union (represented by: A. de Gregorio Merino and M. Moore, Agents)

Intervener in support of the defendant: Commission of the European Communities (represented by: P. Oliver and M. van Heezik, Agents)

Re:

Partial annulment of Council Regulation No 41/2007 of 21 December 2006 fixing for 2007 fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required (OJ 2007 L 15, p. 1), in so far as it fixes the total allowable catches ('TAC') for 2007 in respect of the fishing of cod in the areas covered by Council Regulation No 423/2004 of 26 February 2004 establishing measures for the recovery of cod stocks (OJ 2004 L 70, p. 8)

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *WWF-UK Ltd shall bear its own costs and pay those incurred by the Council.*

3. *The Commission shall bear its own costs.*

([1]) OJ C 117 of 26.5.2007.

Order of the Court of First Instance of 2 June 2008 — Atlantic Dawn and Others v Commission

(Case T-172/07) ([1])

(Action for annulment — Fishing quotas — Regulation (EC) No 2371/2002 — Lack of direct concern — Inadmissibility)

(2008/C 183/42)

Language of the case: English

Parties

Applicants: Atlantic Dawn and Others (Killybegs, Donegal, Ireland); Antarctic Fishing Co. Ltd (Killybegs, Donegal); Atlantean Ltd (Killybegs, Donegal); Killybegs Fishing Enterprises Ltd (Killybegs, Donegal); Doyle Fishing Co. Ltd (Killybegs, Donegal); Western Seaboard Fishing Co. Ltd (Killybegs, Donegal); O'Shea Fishing Co. Ltd (Killybegs, Donegal); Aine Fishing Co. Ltd (Burtonport, Donegal); Brendelen Ltd (Greencastle, Donegal); Cavankee Fishing Co. Ltd (Greencastle, Donegal); Ocean Trawlers Ltd (Killybegs, Donegal); Eileen Oglesby (Burtonport, Donegal); Noel McGing (Killybegs, Donegal); Mullglen Ltd (Dublin, Ireland); Bradan Fishing Co. Ltd (Sligo, Sligo, Ireland); Larry Murphy (Castletownbere, Cork, Ireland); Pauric Conneely (Claregalway, Galway, Ireland); Thomas Flaherty (Kilronan, Aran Islands, Galway); Carmarose Trawling Co. Ltd (Killybegs, Donegal); Colmcille Fishing Ltd (Killybegs, Donegal), (represented by: G. Hogan, SC, N. Travers, T. O'Sullivan, BL and D. Barry, Solicitor)

Defendant: Commission of the European Communities (represented by: K. Banks, Agent)

Intervener in support of the applicants: Kingdom of Spain (represented by: N. Díaz Abad, abogado del Estado)

Re:

Annulment of Commission Regulation (EC) No 147/2007 of 15 February 2007 adapting certain fish quotas from 2007 to 2012 pursuant to Article 23(4) of Council Regulation (EC) No 2371/2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2007 L 46, p. 10)

Operative part of the order

1. *The action is dismissed as being inadmissible.*

2. *The applicants, Atlantic Dawn Ltd and Others, shall bear their own costs and pay those incurred by the Commission.*

3. *The Kingdom of Spain shall bear its own costs.*

([1]) OJ C 170, 21.7.2007.

Order of the Court of First Instance of 19 May 2008 — Transports Schiocchet — Excursions v Commission

(Case T-220/07) ([1])

(Action for damages — Limitation period — Article 46 of the Statute of the Court — Inadmissibility)

(2008/C 183/43)

Language of the case: French

Parties

Applicant: Transports Schiocchet — Excursions SARL (Beuvillers, France) (represented by: D. Schönberger, lawyer)

Defendant: Commission of the European Communities (represented by: J.-F. Pasquier and N. Yerrell, Agents)

Re:

Application for damages for the harm allegedly suffered by the applicant as a result of various alleged illegal acts complained of against the Community institutions.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Transports Schiocchet — Excursions SARL shall bear the costs.*

([1]) OJ C 199 of 25.8.2007.

Action brought on 3 January 2008 — EMSA v Portugal

(Case T-4/08)

(2008/C 183/44)

Language in which the application has been lodged: English

Parties

Applicant: European Maritime Safety Agency (EMSA) (represented by: Professor E. Pache, and J. Menze, Agent)

Defendant: Republic of Portugal

Form of order sought

The European Maritime Safety Agency applies for a judgment of the Court of First Instance under Article 14, sentence 2, of the Seat Agreement establishing that:

— The Portuguese Government is bound by the provisions of the Seat Agreement which is an instrument of public international law within the sphere of Community law and which cannot be modified or changed unilaterally by Portugal, including by means of national legislation;

— according to the Seat Agreement, the Portuguese Government is obliged to secure that staff of the European Maritime Safety Agency and their family members have the right to import from their last country of residence or from the country of which they are nationals, free of duty and without prohibitions or restrictions, in respect of initial establishment, within five years of taking up their appointments with the Agency and in a maximum of two shipments, vehicles purchased under market conditions in the county in question and that the past and current application of this provision of the Seat Agreement by the relevant Portuguese authorities does not fulfil this obligation;

in particular, that the Portuguese Government is obliged to register, following application, under a special series free of duty and without prohibitions or restrictions, vehicles of staff members of the Agency and their families purchased under market conditions in the country of previous residence or in the country of which they are nationals;

— according to the Seat Agreement, the Portuguese Government is obliged to ensure that the staff of the European Maritime Safety Agency and their family members enjoy the privileges and immunities, exemptions and facilities granted by Portugal to members of a comparable category of the diplomatic corps in the Portuguese Republic, and that the past and current application of this provision of the Seat Agreement by the relevant Portuguese authorities does not fulfil this obligation;

in particular, that the Portuguese Government is obliged to apply the rules and provisions in force until July 2007 concerning the registration and taxation of vehicles of staff of the diplomatic corps for staff of the European Maritime Safety Agency having taken up duty before that date, and their families;

that the Portuguese Government is obliged to apply the rules and provisions in force until July 2007 concerning the registration and taxation of vehicles of staff of the diplomatic corps for all other cases;

that the Portuguese Government is obliged to ensure that the staff of the European Maritime Safety Agency and their families are actually granted the privileges and immunities, exemptions and facilities granted by Portugal to members of a comparable category of diplomatic corps in the Portuguese Republic, and that the past and current practice of Portuguese authorities not to process application for registration of staff members of the European Maritime Safety Agency and their families is in contradiction to this obligation;

— the provisions of the Seat Agreement shall not be interpreted and applied to the extent that staff of the European Maritime Safety Agency and their family members do not enjoy at least the rights of any EU national moving residence to Portugal with regard to the introduction of used vehicles into Portuguese territory;

— a reasonable period of time for the processing of application of European Maritime Safety Agency and their family members for car registration in application of the Seat Agreement shall be considered no more than two months; and

— order in accordance with Article 87(2) of the Rules of Procedure of the Court of First Instance that the Portuguese Republic pays the costs.

Pleas in law and main arguments

The European Maritime Safety Agency ('the EMSA' or 'the Agency') was established by Regulation (EC) No 1406/2002 [1] and has its seat in Lisbon. On 28 July 2004 the Protocol between the Government of the Portuguese Republic and the European Maritime Safety Agency [2] ('the Seat Agreement') was signed. The Seat Agreement covers the relations between the EMSA and Portugal as its host state and applies to the agency and its staff.

The applicant submits that the Portuguese Government proposed, without prior request or suggestion of the EMSA, to enter into the said Seat Agreement providing for a range of privileges and immunities, exemptions and facilities for the Agency and its staff largely reflecting the provisions of the Protocol on the Privileges and Immunities of the European Communities ('the Protocol') but also providing additional facilities. It further claims that the text of the Seat Agreement proposed was similar to the text of the Seat Agreement concluded between Portugal and the European Monitoring Centre for Drugs and Drug Addiction ('EMCDDA') on 26 June 1996, in particular concerning vehicle registration.

In September 2005 a working group between the Portuguese Government on the one hand and EMSA and EMCDDA on the other hand was created with a view to draft detailed administrative provisions necessary for the implementation of the two Seat Agreements or Protocols.

The applicant claims that the Portuguese administration, by not processing applications for vehicle registrations submitted by EMSA staff violated its obligations resulting from the Seat Agreement clarifying the obligations resulting from the Protocol applicable to the EMSA according to Article 7 of Regulation (EC) No 1406/2002. Furthermore, the applicant claims that the Portuguese authorities did not apply the relevant Portuguese law in force with regard to EMSA staff and their family members whereas it did for EMCDDA and diplomatic missions. These actions resulted in severe impediments to the functioning of the EMSA, according to the applicant, as vehicles purchased under the legitimate expectation that the existing rules would be implemented remained unregistered. Also, vehicles brought form the place of prior residence or from the state of nationality of staff members remained with number plates of the member state of previous residence in spite of rules of that state as regards the obligation to de-register. In short, the applicant claims that the decision of the Portuguese authorities not to process vehicle registration requests created a series of serious legal and administrative difficulties for staff members who had no choice but operate a vehicle in disrespect to obligations relating to registration, insurance and technical inspection.

With regard to the Court's jurisdiction, it is further submitted that Article 8(2) of Regulation (EC) No 1406/2002 provides that the Court of Justice shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by the Agency and that Article 14 of the Seat Agreement provides that disputes with effect on the application of this agreement shall be examined by an *ad hoc* group of four members. Disputes not resolved in this way shall be subject to the judgment of the Court of Justice of the European Communities.

According to the applicant, the dispute resolution procedure provided for in Article 14 of the Seat Agreement was found to be unsuccessful and hence, the Court of Justice has jurisdiction in the current dispute regarding the interpretation of the Seat Agreement, pursuant to Article 238 EC providing that the Court of Justice shall have jurisdiction to give judgment to any

arbitration clause contained in a contract concluded by or on behalf of the Community, to Article 5(1) of Regulation (EC) No 1406/2002 providing that the Agency shall be a body of the Community, and to Article 225 EC providing that the Court of Fist Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Article 238 EC.

Moreover, the applicant submits that it seeks confirmation by the Court that the Seat Agreement is an instrument of international law within the sphere of Community law that binds the Portuguese authorities and that cannot be unilaterally modified. It further applies for a judgment concluding that the processing of applications for motor vehicle registrations by its staff members is in contradiction to the provisions of the Protocol and that the Portuguese authorities are obliged to implement the relevant provisions of the Protocol within a reasonable period of time. Finally, it claims that the Seat Agreement shall not be interpreted in a way that the staff of the EMSA does not enjoy at least the rights, with regards to vehicle registration, of any EU national transferring its residence to Portugal.

(1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ 2002 L 208, p. 1).

(2) Published in the Portuguese Official Journal No 224 of 22 September 2004, p. 6073, available on the EMSA's website http://www.emsa.europa.eu/Docs/legis/protocol%20pt%20government%20and%20emsa.pdf

Appeal brought on 5 May 2008 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 21 February 2008 in Case F-31/07, *Putterie-De-Beukelaer* v *Commission*

(Case T-160/08 P)

(2008/C 183/45)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, Agents)

Other party to the proceedings: Françoise Putterie-De-Beukelaer (Brussels, Belgium)

Form of order sought by the appellant

— set aside the judgement under appeal;

— refer the case back to the CST;

— reserve the costs.

Pleas in law and main arguments

By this appeal, the Commission requests that the judgment of the Civil Service Tribunal (CST) of 21 February 2008 in Case F-31/07 *Putterie-De-Beukelaer* v *Commission*, in which the CST annulled Ms Putterie-De-Beukelaer's Career Development Report concerning the period from 1 January 2005 to 31 December 2005, be set aside in so far as that report does not acknowledge her potential to carry out duties in category B*.

In support of its appeal, the Commission relies on a single plea in law, alleging, first, infringement by the CST of the principles relating to the scope of the review exercised by the Community judicature of its own motion and, second, infringement of the prohibition on adjudicating *ultra petita*.

The Commission submits that the CST was not entitled to raise of its own motion a plea concerning the substantive legality of the contested act alleging infringement of the respective scope of Article 43 of the Staff Regulations of Officials of the European Communities and Article 10(3) of Annex XIII to those regulations, since substantive pleas are not an absolute bar to proceeding with an action.

In the alternative, the Commission claims that, in so far as paragraphs 75 and 76 of the judgment under appeal could be considered separable from the plea alleging the substantive legality of the contested measure and be categorised as a separate plea alleging that the author of the contested act exceeded its power, the CST infringed the Commission's rights of defence, since the latter was not heard on that point in accordance with Article 77 of the Rules of Procedure of the CST.

Action brought on 6 May 2008 — Ivanov v Commission

(Case T-166/08)

(2008/C 183/46)

Language of the case: French

Parties

Applicant: Vladimir Ivanov (Boulogne Billancourt, France) (represented by: F. Rollinger, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare that the Commission is liable for infringement of the principles of transparency, proper administration, non-discrimination and equal treatment in connection with the recruitment procedure which took place following the vacancy notice for a post as a 'Pre-enlargement Adviser and Political Rapporteur' based in Sofia, in May 2003;

— Order the Commission to make good, on the basis of the second paragraph of Article 288 of the Treaty establishing the European Community, the damage which it caused to the applicant;

— Accordingly, order the Commission to pay to the applicant the amount of EUR 180 000 as damages for the loss sustained;

— Order the Commission to pay the amount of EUR 10 000 in respect of non-material damage sustained by the applicant;

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

Pleas in law and main arguments

In 2003, the applicant applied for a local member of staff's post as a 'Pre-enlargement Adviser' in Sofia. His application was rejected at the preliminary selection stage on account of his dual Franco-Bulgarian nationality as only candidates who had the nationality of a Member State were eligible for the vacant post.

During the recruitment procedure and after the rejection of his application, the applicant unsuccessfully requested more information regarding the procedure and the reasons for the rejection of his application. He then brought the matter before the European Ombudsman, who concluded that there had been maladministration and infringement of the principle of non-discrimination or of equal treatment on the part of the Commission.

By the present action, the applicant requests that the Court of First Instance declare that the Commission is non-contractually liable for infringement of the principles of transparency, proper administration, non-discrimination and equal treatment in connection with the recruitment procedure in question.

Action brought on 13 May 2008 — DEI v Commission

(Case T-169/08)

(2008/C 183/47)

Language of the case: Greek

Parties

Applicant: Dimosia Epikhirisi Ilektrismou A.E. (Athens, Greece) (represented by: P. Anestis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of Commission Decision C(2008) 824 final of 5 March 2008 relating to the grant or retention in force by the Hellenic Republic of rights for the mining of lignite in favour of Dimosia Epikhirisi Ilektrismou (Public Power Corporation).

The applicant puts forward the following pleas for annulment.

The applicant submits, first, that the defendant erred in law when applying Article 86(1) EC in conjunction with Article 82 EC, and made a manifest error of assessment.

Specifically, according to the applicant the defendant erred (i) with regard to the definition of the relevant markets; (ii) with regard to application of the theory of extension of a dominant position, since it did not take into account that, even in the case of public undertakings, the extension must be based on State measures that grant exclusive or special rights; (iii) because the Greek legislation on the basis of which the applicant acquired rights in respect of the exploitation of lignite does not lead to a situation of unequal opportunity to the detriment of competitors; (iv) since the aforementioned legislation does not lead to the maintenance or strengthening of the applicant's dominant position in the wholesale electricity market; and (v) by reason of a manifest error of assessment in not taking into account the recent developments in the Greek electrical energy market inasmuch as they were important for proving the absence of an infringement.

Under the second plea for annulment, the applicant submits that, in issuing the contested decision, the defendant did not comply with the rules laid down by Article 253 EC that govern the statement of reasons.

Under the third plea for annulment, the applicant submits that the contested decision infringes the general principles of legal certainty, of the protection of legitimate expectations and of the protection of property. The applicant further contends that it falls to the Court to rule whether the defendant misused its powers.

Finally, under the fourth plea for annulment, the applicant submits that the defendant did not comply with the principle of proportionality as regards the corrective measures proposed by the contested decision.

Action brought on 15 May 2008 — Commission v Cooperação e Desenvolvimento Regional, SA

(Case T-174/08)

(2008/C 183/48)

Language of the case: Portuguese

Parties

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

Defendant: Cooperação e Desenvolvimento Regional, SA

Form of order sought

— Order the defendant to reimburse the Commission a principal amount of EUR 63 349,27, plus a sum of EUR 28 940,70 in late payment interest until 5 May 2008;

— order the defendant to pay late payment interest from 6 May 2008 at a daily rate of EUR 10,91 until full repayment of the debt has been made;

— order the defendant to pay the costs.

Pleas in law and main arguments

The present action was brought under Article 238 EC.

Within the framework of the project 'European Network of Centres for the Advancement of Telematics in Urban and Rural Areas' (ENCATA), the European Community, represented by the Commission, entered into contract No SU 1001 (SU) ENCATA with 12 contractors, among which the defendant.

In accordance with the provisions of that contract the Commission undertook to grant financial assistance to the group of contractors, among which the defendant, for the development of that project.

The project was set to last for 18 months.

Work was started on the project on 1 January 1996.

The Commission undertook to finance up to 50 % of the total cost of the project.

On 25 September 1997 the parties agreed to a first revision of the contract.

The duration of the project increased from 18 months to 36 months, with a starting date of 1 January 1996.

On 29 June 1998 the parties agreed to a second revision of the contract, following which the duration of the project was reduced from 36 to 30 months, and the starting date of 1 January 1996 remained unchanged.

The final costs of the project approved by the Commission were lower than the advances made by the latter within the context of contract No SU 1001 (SU) ENCATA.

Consequently, the Commission sought reimbursement of the advances made in excess of the costs incurred.

The sum owed by the defendant amounts to EUR 63 349,27 plus late payment interest.

For years the Commission has incessantly been reminding the defendant of its debt and has sent it numerous requests for payment. The defendant, for its part, has acknowledged its debt on numerous occasions and has stated its intention to repay it as soon as possible, but up until now it has not made any payment whatsoever to the Commission of the debt and the late payment interest in respect of the advances made in excess of the framework of the ENCATA project.

Action brought on 9 May 2008 — Liga para a protecção da natureza v Commission of the European Communities

(Case T-186/08)

(2008/C 183/49)

Language of the case: Portuguese

Parties

Applicant: Liga para a protecção da natureza (LPN) (Lisbon, Portugal) (represented by: P. Vinagre e Silva, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annulment of the decision of the European Commission of 28 February 2008 (referred to in letter of 3 April 2008 sent by the Commission to the Liga para a Protecção da natureza (LPN)) whereby the Commission closed the file on the complaint No 2003/4523 relating to the construction of the Baixo Sabor dam, in so far as that decision wrongly presupposes compliance with the procedural formalities essential for the exercise of LPN's rights to participate in the administrative procedure relating to the 'Baixa Sabor Dam' project, initiated with complaint No 2003/4523 addressed to the European Commission;

— Annulment also of the decision whereby the Secretariat-General of the Commission tacitly rejected the confirmatory application submitted by LPN on 19 February 2008 under Article 8 of Regulation No 1049/2001 ([1])

— Order payment to LPN of token compensation for the infringement of LPN's legitimate expectations that the Commission would act fairly and would comply with procedural rules;

— Request of the Commission, under Article 64 *et seq*. of the Rules of Procedure, that it submit to the Court the said decision to close the file of 28 February 2008, which has been neither notified to the applicant nor published;

— Order the Commission to pay the costs.

Pleas in law and main arguments

Decision to close the file

The decision to close the file is invalid since it is based on a clear infringement of the right to present preliminary comments which the Commission itself granted to LPN.

The Commission has refused access to any material in the file which would have enabled LPN to exercise its right to submit preliminary comments, and has not specified the 'internal rules' (which it claims exist) on the basis of which that right was granted by it.

There has also been an infringement of the fundamental principles of good faith, fairness, transparency and proper administration, since the comments cannot even have been analysed before adoption of the final decision to close the file (clearly demonstrated by the fact that less than 24 hours elapsed between the sending of the preliminary comments — 40 pages in Portuguese, with fresh facts and arguments — and the decision to close the file).

Decision of implied rejection

Having regard to Regulations No 1367/2006 ([2]) and No 1049/2001, which confirm unequivocally the right of access to 'internal rules' based on which the right to submit preliminary comments is granted, the silence — first of the Commission, then of the Secretariat General on the confirmatory application — is inexplicable and flatly contravenes the right of access to documents and information laid down by those regulations.

([1]) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

([2]) Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, p. 13).

Action brought on 22 May 2008 — Forum 187 v Commission

(Case T-189/08)

(2008/C 183/50)

Language of the case: English

Parties

Applicant: Forum 187 ASBL (Brussels, Belgium) (represented by: A. Sutton, G. Forwood, Barristers)

Defendant: Commission of the European communities

Form of order sought

— annul the contested decision insofar as it does not provide reasonable prospective transitional periods for the coordination centres covered by the judgment of the Court of Justice of 22 June 2006;

— order the Commission to pay costs of this case and

— take such other or further steps as justice may require.

Pleas in law and main arguments

In the present case, the applicant seeks the annulment of the Commission Decision 2008/283/EC of 13 November 2007 on the aid scheme implemented by Belgium for coordination centres established in Belgium, amending Decision 2003/757/EC [1] following the partial annulment of that first decision by the Court of Justice [2]. In that ruling, the ECJ held that the 2003 decision did not provide transitional measures for those coordination centres with an application for renewal of their authorisation pending on the date on which the contested decision was notified, or with an authorisation which expired at the same time as or shortly after the notification of that decision.

The contested decision creates transitional periods for the category of centres covered by the Court's ruling.

The applicant states in support of its contentions that the contested decision:

— is incompatible with Community law on existing aids, as consistently interpreted by the European Courts;

— denies the centres their legitimate expectations to benefit from a reasonable period after the Commission's final decision closing the existing aid procedure (notified to the applicant on 17 March 2008), to re-arrange their business and fiscal affairs;

— infringes Article 254(3) EC;

— by providing for the retroactive levying and payment taxes in an existing aid case, in effect orders the recovery of the aid as if it was illegal aid and this fails to respect the principle that existing aids schemes should only be changed prospectively, at a date after the final Commission decision closing the existing aid procedure;

— fails to respect the legitimate expectations of coordination centres which relied on the order of the President of the Court of Justice of 26 June 2003 [3] as a legal basis upon which they could obtain the renewal of authorisations;

— infringes the principles of equal treatment and non-discrimination by providing different treatment without objective justification for different groups of centres.

[1] OJ 2008 L 90, p. 7.
[2] Joined Cases C-182/03 and C-217/03, *Belgium and Forum 187* v *Commission*, [2006] ECR I-5479].
[3] Joined Cases C-182/03 R and C-217/03 R, *Belgium and Forum 187* v *Commission*, [2003] ECR I-6887].

Action brought on 22 May 2008 — JOOP! v OHIM

(Case T-191/08)

(2008/C 183/51)

Language in which the application was lodged: German

Parties

Applicants: JOOP! GmbH (Hamburg, Germany) (represented by: H. Schmidt-Hollburg, W. Möllering, A. Löhde, H. Leo, A. Witte, T. Frank, A. Theil, H.-P. Rühland, B. Willers and T. Rein)

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 of 6 March 2008 in Case R 1822/2007-1;

— Order the Office for Harmonisation in the Internal Market to pay the costs including those incurred during the appeal proceedings.

Pleas in law and main arguments

Community trade mark concerned: figurative mark representing an exclamation mark, for goods in Classes 14, 18 and 25 (Application No 5 332 176).

Decision of the Examiner: Rejection of the registration.

Decision of the Board of Appeal: Dismissal of the appeal.

Pleas in law: Infringement of Article 7(1)(b) and (c) of Regulation (EC) No 40/94 [1], as the mark applied for has distinctive character and its availability does not have to be preserved.

[1] Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ L 11, 14.1.1994, p. 1).

Action brought on 30 May 2008 — Antwerpse Bouwwerken v Commission

(Case T-195/08)

(2008/C 183/52)

Language of the case: Dutch

Parties

Applicant: Antwerpse Bouwwerken NV (Antwerp, Belgium) (represented by: J. Verbist and D. de Keuster, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul (i) the decision of 29 April 2008, notified by the Commission by letter of 29 April 2008, received by the applicant on 5 May 2008, by which the Commission informed the applicant that the latter's tender had been unsuccessful, as further explained in a letter from the European Commission of 6 May 2008 and received by the applicant on 8 May 2008, in which the Commission sets out its reasons for its rejection decision, and (ii) the decision of 23 April 2008 on the award of the contract, notified by the Commission by letter of 15 May 2008, received by the applicant on 16 May 2008;

— declare the Commission to be non-contractually liable for the damage suffered by the applicant, to be quantified at a later date;

— order the Commission to pay the costs.

Pleas in law and main arguments

The applicant submitted a tender in response to the Commission's call for tenders for the construction of a reference materials production hall ([1]). Ultimately, the applicant's tender was not selected by the Commission.

The applicant relies in its application on an infringement of Article 91 of Regulation 1605/2002 ([2]) and of Articles 122, 138 and 148 of Regulation 2342/2002 ([3]) in conjunction with Articles 2 and 28 of Directive 2004/18/EC ([4]).

According to the applicant, it is apparent from the official records of selection of tenders that the successful tender did not comply with an essential tendering specification and that, consequently, it should have been rejected for failure to comply with the conditions of the contract. The intervention by the tenderer of the successful bid was not merely a case of the tender being clarified but of it being supplemented, which was not permissible at that stage of the procedure.

In addition, the decision on the award of the contract does not satisfy the principle of transparency, as essential elements of the assessment records, as provided to the applicant, have been rendered illegible.

([1]) B-Geel: Construction of a reference materials production hall (2006/S 102-108785).
([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 2002 L 248, p. 1).
([3]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357, p. 1).
([4]) Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts (OJ 2004 L 134, p. 114).

Action brought on 3 June 2008 — Ziegler v Commission

(Case T-199/08)

(2008/C 183/53)

Language of the case: French

Parties

Applicant: Ziegler SA (represented by: J.-L. Lodomez, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the European Commission Decision of 11 March 2008 on a proceeding under Article 81 of the EC Treaty and Article 53 of the EEE Agreement (Case COMP/38.453 — International Removal Services), which imposes a fine of EUR 9 200 000,00 on the applicant;

— in the alternative, cancel the fine;

— in the further alternative, substantially reduce the amount of the fine;

— in any event, order the European Commission to pay all the costs.

Pleas in law and main arguments

By the present action, the applicant seeks the annulment of Commission Decision C(2008) 926 final of 11 March 2008 in Case COMP/38.453 — International Removal Services, by which the Commission found that certain undertakings, including the applicant, infringed Article 81 of the EC Treaty and Article 53 of the European Economic Area Agreement by fixing prices in Belgium for international removal services, by sharing part of that market and by rigging the procedure under invitations to tender.

In support of its allegations, the applicant claims that the Commission made manifest errors of assessment and of law in the definition of the market in question and in the evaluation of its size and of the market shares of each of the companies in question.

The applicant relies, in addition, on pleas in law alleging breach of the duty to state the reasons for the decision, of the rights of the defence, of the right of access to the file, of the right to fair procedure and of the general principle of sound administration.

So far as concerns the fine imposed and its amount, the applicant claims that:

— the Commission did not show that the practices in questions had appreciably affected trade between the Member States;

— the amount of the find is disproportionate in relation to the effective extent of the practices and their actual effect on the market; and

— the practice of bogus quotes was known and accepted by the Commission for a long time; the lack of any reaction by the Commission led the applicant to believe that the practice was lawful.

Finally, the applicant maintains that the Commission did not take into account, as mitigating circumstances, that the concerted practice ceased long ago so far as the applicant was concerned and that bogus quotes were a response to market demand and not a cartel or concerted practice. The applicant also relies on breach of the principle of equal treatment.

Action brought on 22 May 2008 — Interflon v OHIM — Illinois Tool Works (FOODLUBE)

(Case T-200/08)

(2008/C 183/54)

Language in which the application was lodged: English

Parties

Applicant: Interflon BV (Roosendaal, Netherlands) (represented by: S. M. Wertwijn, lawyer)

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

Other party to the proceedings before the Board of Appeal: Illinois Tool Works Inc. (Glenview, United States)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 3 March 2008 in case R 638/2007-2; and

— grant applicant's request for the cancellation of the Community trade mark concerned.

Pleas in law and main arguments

Community trade mark concerned: The word mark 'FOODLUBE' for goods in classes 1 and 4 — registration No 1 647 734

Decision of the Cancellation Division: Refusal of the request for the declaration of invalidity

Decision of the Board of Appeal: Dismissal of the appeal

Pleas in law: Infringement of Article 7(1)(b) of Council Regulation No 40/94 as the trade mark concerned is devoid of any distinctive character; infringement of Article 7(1)(c) of Council Regulation 40/94 as the trade mark concerned is not capable of distinguishing the indicated goods in terms of their origin.

Action brought on 5 June 2008 — CLL Centre de langues v Commission

(Case T-202/08)

(2008/C 183/55)

Language of the case: French

Parties

Applicant: Centre de langues à Louvain-la-Neuve et -en-Woluwe (CLL Centre de langues) (Louvain-la-Neuve, Belgium) (represented by: F. Tulkens and V. Ost, lawyers)

Defendant: Commission of the European Communities

Form of order sought

— Annul the rejection decision;

— Order the Commission to bear its own costs and to pay those incurred by CLL.

Pleas in law and main arguments

The applicant disputes the Commission's decision to reject its application to participate in invitation to tender ADMIN/D1/PR/2008/004 regarding language training for staff at the European Union (EU) institutions, bodies and agencies in Brussels (OJ 2008/S 44-060121), on the ground that the application was submitted after the deadline stated in the contract notice.

In support of its action, the applicant submits that the contested decision is based on an incorrect supposition that the awarding authority is required to reject all late applications to participate. The applicant takes the view, on the contrary, that the awarding authority has a margin of discretion in that regard.

Furthermore, the applicant submits that the contested decision is not sufficiently reasoned, since the Commission has not explained why it has not exercised its discretionary powers.

Finally, the applicant raises a plea alleging breach of Article 123 of the implementing rules ([1]), according to which the number of candidates invited to tender must be sufficient to ensure genuine competition, and the disproportionate nature of the rejection of the applicant's application.

([1]) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, p. 1).

Order of the Court of First Instance of 23 May 2008 — FagorBrandt v Commission

(Case T-273/04) ([1])

(2008/C 183/56)

Language of the case: French

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

([1]) OJ C 251, 9.10.2004.

Order of the Court of First Instance of 5 May 2008 — Rath v OHIM — Sanorell Pharma (Immunocel)

(Case T-368/06) ([1])

(2008/C 183/57)

Language of the case: German

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

([1]) OJ C 56, 10.3.2007.

Order of the Court of First Instance of 2 June 2008 — Avaya v OHIM — ZyXEL Communications (VANTAGE CNM)

(Case T-171/07) ([1])

(2008/C 183/58)

Language of the case: English

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

([1]) OJ C 170, 21.7.2007.

Order of the Court of First Instance of 9 June 2008 — Malheiro v Commission

(Case T-228/07) ([1])

(2008/C 183/59)

Language of the case: English

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

([1]) OJ C 24, 8.9.2007.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Order of the Civil Service Tribunal (First Chamber) of 26 May 2008 — Braun-Neumann v Parliament

(Case F-79/07) ([1])

(Staff case — Officials — Pensions — Survivor's pension — Payment of 50 % owing to the existence of another surviving spouse — Inadmissibility — Complaint out of time — Absolute bar to proceeding — Raised by the Civil Service Tribunal of its own motion — Application ratione temporis of the Rules of Procedure of the Court of First Instance)

(2008/C 183/60)

Language of the case: German

Parties

Applicant: Kurt-Wolfgang Braun-Neumann (Merzig, Germany) (represented by: P. Ames, lawyer)

Defendant: European Parliament (represented by: J. F. De Wachter, K. Zejdová)

Re:

Claim for full payment of the survivor's pension.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Each party is ordered to pay its own costs.*

([1]) OJ C 235, 6.10.2007, p. 31.

Order of the Civil Service Tribunal (First Chamber) of 22 May 2008 — Cova v Commission

(Case F-101/07) ([1])

(Civil service — Officials — Remuneration — Article 7(2) of the Staff Regulations — Interim allowance — Inadmissible)

(2008/C 183/61)

Language of the case: English

Parties

Applicant: Philippe Cova (Brussels, Belgium) (represented by: S.A. Pappas, Advocate)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the decision to limit to one year the period during which the applicant, an official called upon to occupy, on a temporary basis, a post of head of unit, may benefit from the differential allowance provided for by Article 7(2) of the Staff Regulations.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The parties shall bear their own costs.*

([1]) OJ C 269, 10.11.2007, p. 73.

Order of the Civil Service Tribunal (First Chamber) of 22 May 2008 — Daskalakis v Commission

(Case F-107/07) ([1])

(Civil service — Officials — Remuneration — Article 7(2) of the Staff Regulations — Interim allowance — Inadmissible)

(2008/C 183/62)

Language of the case: English

Parties

Applicant: Constantin Daskalakis (Brussels, Belgium) (represented by: S.A. Pappas, Advocate)

Defendant: Commission of the European Communities (represented by: J. Currall and B. Eggers, Agents)

Re:

Annulment of the decision to limit to one year the period during which the applicant, an official called upon to occupy, on a temporary basis, a post of head of unit, may benefit from the differential allowance provided for by Article 7(2) of the Staff Regulations.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *The parties shall bear their own costs.*

(1) OJ C 315, 22.12.2007, p. 46.

Action brought on 22 October 2007 — Strack v Commission

(Case F-119/07)

(2008/C 183/63)

Language of the case: German

Parties

Applicant: Guido Strack (Cologne, Germany) (represented by: H. Tettenborn, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Annul the Commission's decisions of 30 May 2005, 19 December 2006, 12 January 2007 and 20 July 2007 in so far as they reject the conduct of an independent mediation procedure in respect of all existing disputes between the applicant and the defendant and immediate intervention by the defendant and the adoption of dispute resolution measures;

— annul the Commission's decisions of 26 February 2007 and 20 July 2007 in so far as they refuse payment of a provisional allowance pursuant to Article 19(4) of the Common Rules on insurance against the risk of accident and of occupational disease;

— order the Commission to pay appropriate damages to the applicant of at least EUR 15 000 for the non-material damage and damage to health caused to the applicant by the decisions sought to be annulled in accordance with the above applications, together with interest, from the date on which the action was brought, at a rate of 2 percentage points per year above the main refinancing operations rate fixed by the European Central Bank for the period in question;

— order the Commission to pay the costs.

Pleas in law and main arguments

The first and second heads of claim in the applicant's application are based on the breach of the duty of care owed to the applicant by the defendant, on the principle of good administration and on the prohibition of abuse of discretion, or errors of assessment in the contested Commission decisions. In addition, as regards the first two heads of claim, the applicant objects on the basis that the decisions are contrary to the second sentence of the second paragraph of Article 25 of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') and in breach of his fundamental rights to respect for physical integrity and for private life which are protected by Articles 3(1) and 7 (also, with regard to the second head of claim, by Articles 41 and 47) of the Charter of Fundamental Rights, and by Article 8 (and also by Article 13, as regards the second head of claim) of the European Convention on Human Rights.

With regard to the second head of claim, the applicant also objects on the basis that the contested decisions infringe Article 73 of the Staff Regulations and the procedural provisions of the Rules on insurance against the risk of accident and of occupational disease, in particular Article 15 *et seq.* thereof.

In his third head of claim, the applicant submits that, on the basis of what he regards as the defendant's administrative error, he is entitled, in accordance with the second paragraph of Article 288 of the EC Treaty and general principles of law, to receive appropriate compensation for the non-material damage suffered by him.

By the fourth head of claim, the applicant asks the Tribunal to order the defendant to pay the costs of the proceedings, the latter having triggered the present action by making allegedly untrue statements, in its rejection of the complaint, concerning the position allegedly taken by the medical committee.

Action brought on 31 October 2007 — Baniel-Kubinova and Others v Parliament

(Case F-131/07)

(2008/C 183/64)

Language of the case: French

Parties

Applicants: Barbora Baniel-Kubinova and Others (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and É. Marchal, lawyers)

Defendant: European Parliament

Form of order sought

— Annul the decisions of the appointing authority of the European Parliament not to grant the applicants the daily subsistence allowance laid down in Article 10 of Annex VII to the Staff Regulations;

— Order the European Parliament to pay the costs.

Pleas in law and main arguments

In support of their action, the applicants invoke the infringement of Article 71 of the Staff Regulations and of Article 10 of Annex VII to the Staff Regulations.

Action brought on 18 March 2008 — Carvalhal Garcia v Council

(Case F-40/08)

(2008/C 183/65)

Language of the case: Portuguese

Parties

Applicant: Daniela Carvalhal Garcia (Sines, Portugal) (represented by: F. Antas da Cunha, lawyer)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the Council's decision refusing to grant the education allowance for the applicant's daughter

Form of order sought

The applicant claims that the Tribunal should:

— Annul the final decision of the Council of the European Union's head of personnel of 16 November 2007 and rule that it must be replaced by a separate decision granting the education allowance for the applicant's daughter with regard to the 2006/2007 school year

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Action brought on 16 April 2008 — Spee v Europol

(Case F-43/08)

(2008/C 183/66)

Language of the case: Dutch

Parties

Applicant: David Spee (Rijswijk, Netherlands) (represented by: P. de Casparis, lawyer)

Defendant: European Police Office (Europol)

Subject-matter and description of the proceedings

Application for annulment of Europol's decision to withdraw the offer of employment for which the applicant had submitted an application and to subsequently republish it, and an application for damages

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision of 7 January 2008 issued after a complaint and the underlying decisions of 20 June 2007 and 6 July 2007 to declare vacant once again the post of First Officer in the IMT1 Infrastructure Unit and not to appoint the applicant;

— Order Europol to search for an equitable solution to the situation in which the applicant finds himself following the rash and defective decision;

— Order Europol to pay damages to the applicant in the amount of EUR 5 000 net;

— Order Europol to pay the costs.

Action brought on 19 May 2008 — Giannini v Commission

(Case F-49/08)

(2008/C 183/67)

Language of the case: French

Parties

Applicant: Massimo Giannini (Brussels, Belgium) (represented by: L. Levi and C. Ronzi, lawyers)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

Application for, first, annulment of the decision dismissing the applicant and an order that the defendant pay all the pecuniary rights linked to the continuance of the contract, as well as annulment of a number of decisions refusing the applicant entitlement to pecuniary rights. Secondly, an application for compensation for the material and non-material harm suffered by the applicant.

Form of order sought

The applicant claims that the Tribunal should:

— Annul the decision dismissing the applicant, communicated on 10 July 2007;

— So far as necessary, annul the decision rejecting his complaint, notified on 5 February 2008;

— Order the Commission to pay all the pecuniary rights linked to the continuance of the applicant's contract (*inter alia*, the basic salary, after deduction of the unemployment allowance paid, the allowances and reimbursements calculated over the duration of three years of the contract, and the travel expenses from the place of employment to the place of origin) plus default interest from the time when each of those rights became due until full payment, calculated at a rate three points above that set by the European Central Bank for its main refinancing operations, as applicable during the period in question;

— In any event, annul the decisions of 27 July 2007 and of 20 September 2007 to withhold EUR 5 218,22 from the applicant's remuneration for August 2007, corresponding to part of the travel expenses from the applicant's place of employment to his place of origin and, consequently, the reimbursement of that sum of EUR 5 218,22 plus default interest from 15 August 2007 until full payment, calculated at a rate three points above that set by the European Central Bank for its main refinancing operations, as applicable during the period in question;

— In any event, annul the decision of 28 August 2007 to limit the installation allowance to one third of the sum received in November 2006 and to recover the other two thirds, that is EUR 4 278,50, from the remuneration of February 2006 and, consequently, order the reimbursement of that sum of EUR 4 278,50 plus default interest from 15 February 2008, until full payment, calculated at a rate three points above that set by the European Central Bank for its main refinancing operations, as applicable during the period in question;

— Allocate damages and interest to compensate for the material and non-material harm suffered, provisionally valued at EUR 200 000;

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

Action brought on 21 May 2008 — Stols v Council

(Case F-51/08)

(2008/C 183/68)

Language of the case: French

Parties

Applicant: Wilhelmus Louis Maria Stols (Halsteren, Netherlands) (represented by: S. Rodrigues and C. Bernard-Glanz, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decision of the appointing authority not to include the applicant's name on the list of officials promoted to grade AST 11 for the 2007 promotion exercise.

Form of order sought

— Annul the decision of the appointing authority not to include the applicant in the list of officials promoted to grade AST 11 for the 2007 promotion exercise, as evidenced by Staff Note No 136/07 of 16 July 2007;

— Annul, in so far as it is necessary, the decision of the appointing authority to reject the applicant's complaint;

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

Action brought on 4 June 2008 — Plasa v Commission

(Case F-52/08)

(2008/C 183/69)

Language of the case: French

Parties

Applicant: Wolfgang Plasa (Algiers, Algeria) (represented by: G. Vandersanden, lawyer)

Defendant: Commission of the European Communities

Subject-matter and description of the proceedings

First, annulment of the Commission decision of 8 May 2008 to reassign the applicant to headquarters in Brussels from 1 August 2008 and, second, a claim for damages in respect of the material and non material damage suffered as a result of that decision.

Form of order sought

— Annul the Commission decision of 8 May 2008 to reassign the applicant to headquarters in Brussels from 1 August 2008;

— Order the Commission to pay damages in respect of the material and non-material damage suffered as a result of that decision, the former begin assessed at EUR 150 000 and the latter at the equivalent of a year of salary, namely EUR 150 000, those two assessments being provisional and subject to increase in the course of the proceedings;

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

Action brought on 28 May 2008 — Bouillez and Others v Council

(Case F-53/08)

(2008/C 183/70)

Language of the case: French

Parties

Applicants: Vincent Bouillez (Overijse. Belgium) and Others (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal, lawyers)

Defendant: Council of the European Union

Subject-matter and description of the proceedings

Annulment of the decisions of the appointing authority not to promote the applicants to grade AST 7 for the 2007 promotion exercise.

Form of order sought

— Annul the decisions of the appointing authority not to promote the applicants to grade AST 7 for the 2007 promotion exercise (2007 session) and, in so far as it is possible, the decisions to promote to that grade, for the same promotion exercise, the officials whose names appear in the list of promotions published in Staff Note No 136/07 of 16 July 2007 and who were performing duties at a lower level of responsibility than theirs;

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