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Contents

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For reasons of protection of personal data and/or confidentiality, some information contained in this issue cannot be disclosed anymore and therefore a new authentic version has been published.

IV

(Notices)

NOTICES FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

COURT OF JUSTICE OF THE EUROPEAN UNION

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

(2019/C 246/01)

Last publication

OJ C 238, 15.7.2019

Past publications

OJ C 230, 8.7.2019

OJ C 220, 1.7.2019

OJ C 213, 24.6.2019

OJ C 206, 17.6.2019

OJ C 187, 3.6.2019

OJ C 182, 27.5.2019

These texts are available on:

EUR-Lex: http://eur-lex.europa.eu

GENERAL COURT

Criteria for the assignment of cases to Chambers

(2019/C 246/02)

At its plenum on 3 July 2019, the General Court laid down, in accordance with Article 25 of the Rules of Procedure, the criteria for the assignment of cases to Chambers.

These are as follows:

1. Cases shall be assigned to Chambers of three Judges as soon as possible after the application has been lodged and without prejudice to any subsequent application of Article 28 of the Rules of Procedure.

2. Civil service cases, that is cases brought pursuant to Article 270 TFEU and, where appropriate, Article 50a of the Protocol on the Statute of the Court of Justice of the European Union, shall be allocated to the First Chamber, the Second Chamber, the Third Chamber and the Fourth Chamber in turn, in accordance with the date on which those cases are registered at the Registry.

3. Cases concerning intellectual property rights referred to in Title IV of the Rules of Procedure shall be allocated to the Fifth Chamber, the Sixth Chamber, the Seventh Chamber, the Eighth Chamber, the Ninth Chamber and the Tenth Chamber in turn, in accordance with the date on which those cases are registered at the Registry.

4. Cases other than those referred to in paragraphs 2 and 3 shall be allocated to the Chambers in turn, in accordance with the date on which they are registered at the Registry, following two separate rotas:

   — for cases concerning application of the competition rules applicable to undertakings, the rules on State aid and the rules on trade protection measures,

   — for all other cases.

5. The President of the General Court may derogate from the rotas outlined in paragraphs 2, 3 and 4 in order to take account of a connection between cases or with a view to ensuring an even spread of the workload.

6. In the light of the decision of the General Court, taken at its plenum on 19 June 2019, on the conduct of the activity of the General Court from 1 to 26 September 2019 (OJ 2019 C 238, p. 2), providing that the decision of the General Court of 11 May 2016 on the criteria for the assignment of cases to Chambers (OJ 2016 C 296, p. 2) will continue to apply between 1 and 26 September 2019, the criteria for the assignment of cases to Chambers set out above shall be laid down for the period from 27 September 2019 to 31 August 2022.

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Judecătoria Orăștie (Romania) lodged on 20 November 2018 — EV v Inspectoratul General al Poliției Române-Brigada Autostrăzi și misiuni speciale — Biroul de Poliție Autostrada A1 Râmnicu Vâlcea — Deva (IGPR)

(Case C-723/18)

(2019/C 246/03)

Language of the case: Romanian

Referring court

Judecătoria Orăștie

Parties to the main proceedings

Applicant: EV

Defendant: Inspectoratul General al Poliției Române-Brigada Autostrăzi și misiuni speciale — Biroul de Poliție Autostrada A1 Râmnicu Vâlcea — Deva (IGPR)

By order of 8 May 2019, the Court of Justice of the European Union (Sixth Chamber) declared that it manifestly lacks jurisdiction to answer the questions referred by the Judecătoria Orăștie (Romania) by decision of 5 November 2018.

Request for a preliminary ruling from the Amtsgericht Düsseldorf (Germany) lodged on 26 February 2019 — Flightright GmbH v Eurowings GmbH

(Case C-180/19)

(2019/C 246/04)

Language of the case: German

Referring court

Amtsgericht Düsseldorf

Parties to the main proceedings

Applicant: Flightright GmbH

Defendant: Eurowings GmbH

Questions referred

Must Article 7(1) of Regulation (EC) No 261/2004 [1] be interpreted as meaning that the relevant distance for the payment of compensation is to be calculated by reference to the entire journey?

Must (assuming that the regulation is applicable to the section of the journey concerned) the concept of 'flight' then be interpreted as meaning that, in the case of reservations where air passengers reach their final destination only with an intermediate stop and possibly a transfer to another aircraft, it is only the section on which the delay has actually occurred that is meant, or is 'flight' to be interpreted in such a case as meaning that the entire journey from the first point of departure to the final destination is relevant for the distance?

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[1] Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Request for a preliminary ruling from the Juzgado de Primera Instancia No 17 de Palma de Mallorca (Spain) lodged on 14 March 2019 — CY v Caixabank, S.A.

(Case C-224/19)

(2019/C 246/05)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia No 17 de Palma de Mallorca

Parties to the main proceedings

Applicant: CY

Defendant: Caixabank, S.A.

Questions referred

1. The Court of Justice is asked whether, in the light of Article 6(1) of Directive 93/13, [1] a clause declared invalid on grounds of unfairness which attributes to the borrower all the formalisation, novation or cancellation costs of a loan agreement secured by a mortgage **may be varied as regards its restitutory effects after it has been declared invalid on grounds of unfairness.**

2. The Court of Justice is asked whether, in the light of Article 6(1) of Directive 93/13, national case-law establishing that, after the declaration of invalidity of a clause attributing to the borrower all the formalisation, novation or cancellation costs of a loan agreement secured by a mortgage, **notarial and management expenses must be borne equally by the lender and borrower** may be regarded as variation by the courts of the declaration of invalidity of an unfair term and therefore contrary to the principle set out in Article 6(1) of Directive 93/13 that unfair terms are not binding.

3. The Court of Justice is asked whether, in the light of Article 6(1) of Directive 93/13, national case-law establishing that, after the declaration of invalidity of the clause attributing to the borrower all the formalisation, novation or cancellation costs of a loan agreement secured by a mortgage, the borrower must also be required to pay the **costs involved in valuing the property and the tax on the establishment of the mortgage deriving from formalisation of the loan** infringes the principle that consumers are not bound by terms found to be unfair, and whether it is contrary to Article 3(2) of Directive 93/13 to **place on the borrower the burden of proving that he was not permitted to provide his own valuation of the property.**

4. The Court of Justice is asked whether, in the light of Article 6(1) of Directive 93/13, it is contrary [to that directive] for national case-law, after the declaration of invalidity of a clause attributing to the borrower all the creation, novation or cancellation costs of a loan agreement secured by a mortgage, to establish that that clause can continue to have effects for the borrower where it makes modifying novations or cancels the mortgage, **in that the borrower must continue to pay the costs resulting from such modification or cancellation of the mortgage**, and whether the attribution of those costs to the borrower entails an infringement of the principle that consumers are not bound by terms found to be unfair.

5. The Court of Justice is asked whether, in the light of Article 6(1) in conjunction with Article 7(1) of Directive 93/13, national case-law which partially excludes the restitutory effect of the declaration of invalidity on grounds of unfairness of a clause attributing to the borrower all the formalisation, novation or cancellation costs of a loan agreement secured by a mortgage is incompatible with the deterrent effect on the seller or supplier provided for in Article 7(1) of Directive 93/13.

6. The Court of Justice is asked whether, in the light of the principle established in the case-law of the Court of Justice that clauses declared invalid cannot be varied, and in the light of the principle that unfair terms are not binding set out in Article 6 of the directive, national case-law which varies the restitutory effects after the declaration of invalidity of a clause attributing to the borrower all the formalisation, novation or cancellation costs may be regarded as an infringement, based on the interests of the borrower.

7. The Court of Justice is asked whether, in the light of the Article 3(1) and (2) of Directive 93/13, national case-law establishing that an **'arrangement fee' clause automatically satisfies the transparency test** may infringe the principle of the reversal of the burden of proof established in Article 3(2) of the directive, since the seller or supplier is not required to prove that it provided information in advance or that the clause was individually negotiated.

8. The Court of Justice is asked whether it is contrary to Article 3 of Directive 93/13 and the case-law of the Court of Justice for a consumer to be regarded under national case-law as being automatically aware that it is normal practice for financial institutions to charge an arrangement fee, and, accordingly, for a lender not to be required to provide any evidence to establish that the clause was individually negotiated, or whether, on the contrary, and in any event, a lender must establish that that clause was individually negotiated.

9. The Court of Justice is asked whether, in the light of Articles 3 and 4 of Directive 93/13 and the case-law of the Court of Justice, it is contrary to that directive for national case-law to establish that **it is not possible to assess the unfair nature of the 'arrangement fee' clause under Article 4(2) since it relates to the definition of the main subject matter of the contract**, or, on the contrary, whether such an arrangement fee must be regarded as forming not part of the contract price but an ancillary charge, and therefore the national court must be allowed to review its transparency and/or content in order to determine whether it is unfair in accordance with national law.

10. The Court of Justice is asked whether, in the light of Article 4(2) of Directive 93/13, which was not transposed by [Ley 7/1998, de 13 de abril, sobre condiciones generales de la contratación] [2] into the Spanish legal system, it is contrary to Article 8 of Directive 93/13 for a Spanish court to rely upon and apply Article 4(2) of that directive when that provision has not been transposed into Spanish law in accordance with the wishes of the legislature — which sought a comprehensive level of protection in relation to all the terms that a seller or supplier may insert into a consumer contract, including those which relate to the main subject matter of the contract, even if those terms were drafted in plain, intelligible language — if the view is taken that an 'arrangement fee' clause constitutes the main subject matter of the loan agreement.

11. The Court of Justice is asked whether, in the light of Article 3(1) of Directive 93/13, the 'arrangement fee' clause, **when it has not been individually negotiated and the financial entity has not established that it corresponds to services actually provided and to costs incurred, gives rise to a significant imbalance between the rights and obligations of the parties to the contract** and must be declared invalid by the national court.

12. The Court of Justice is asked whether, in the light of Article 6(1) in conjunction with Article 7(1) of Directive 93/13, **a costs order against the seller or supplier** — resulting from proceedings in which a consumer has brought actions for a declaration of invalidity on grounds of unfairness of terms in a contract concluded with him **and in which the Courts have declared the term invalid on the ground that it is unfair** — is a necessary consequence of the principle that unfair terms are not binding and the principle of deterring the seller or supplier, where those actions for a declaration of invalidity are upheld by the national court, regardless of whether the repayments ordered by the judgment have actually been made, it being understood, moreover, that the main claim is for a declaration of invalidity of the term and that the repayment of amounts paid is merely an ancillary claim inherent in the former.

13. The Court of Justice is asked whether, in the light of the principle that unfair terms are not binding and the principle of the deterrent effect of Directive 93/13 (Articles 6(1) and 7(1)), the restitutory effects deriving from a declaration of invalidity on grounds of unfairness of a term in a contract concluded between a consumer and a seller or supplier **may be limited in time, by the upholding of an objection that the action for repayment of the amount paid is time-barred, even though an action for a declaration that a term is invalid*ab initio*on the ground that it is unfair is not subject to any limitation period under national legislation.**

(1) Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29).

(2) Law 7/1998 of 13 April on general contractual conditions.

Request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción No 6 de Ceuta (Spain) lodged on 21 March 2019 — HC and ID v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-247/19)

(2019/C 246/06)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción No 6 de Ceuta

Parties to the main proceedings

Applicants: HC, ID

Defendant: Banco Bilbao Vizcaya Argentaria, S.A.

Questions referred

1. Whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, ([1]) in particular Articles 6(1) and 7(1) of the directive, the following ruling is compliant with EU law in order to ensure protection for consumers and users and compliance with the relevant case-law: the ruling by the Supreme Court in judgments 44 to 49 of 23 January 2019, which establishes the unambiguous criterion that a term in a consumer mortgage loan agreement that has not been negotiated and that stipulates that all the costs of arranging the mortgage are to be borne by the borrower is unfair, and which apportions the various expenses that are involved in the unfair term found to be void between the bank that imposed the term and the borrower, in order to limit repayments of amounts wrongly paid under national legislation.

   And whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1) and 7(1) of the directive, in order to ensure protection for consumers and users and compliance with the relevant case-law, it is compliant with EU law for the Supreme Court to adopt an inclusive interpretation of a term that is void for unfairness if the term can be severed and its effects abolished without affecting the continued existence of the mortgage loan agreement.

2. Also, whether, as regards Article 394 of the Ley de Enjuiciamiento Civil, ([2]) which establishes the principle that the costs of proceedings are to be borne by the unsuccessful party, it can be held that where an unfair expenses clause is declared void but the effects of voiding the term are limited to apportioning the expenses in question, it is contrary to the EU legal principles of effectiveness and the non-binding nature of unfair terms to conclude that a claim has been upheld in part, and whether such a conclusion could be interpreted as producing an inverse deterrent effect, which thus fails to protect the legitimate interests of consumers and users.

([1]) OJ 1993 L 95, p. 29.
([2]) Law on Civil Procedure.

Request for a preliminary ruling from the Juzgado de Primera Instancia e Instrucción de Ceuta (Spain) lodged on 27 March 2019 — LG, PK v Banco Bilbao Vizcaya Argentaria, S.A.

(Case C-259/19)

(2019/C 246/07)

Language of the case: Spanish

Referring court

Juzgado de Primera Instancia e Instrucción de Ceuta

Parties to the main proceedings

Applicants: LG, PK

Defendant: Banco Bilbao Vizcaya Argentaria, S.A.

Questions referred

Whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, ([1]) in particular Articles 6(1) and 7(1) of the directive, the following ruling is compliant with EU law in order to ensure protection for consumers and users and compliance with the relevant case-law: the ruling by the Supreme Court in judgments 44 to 49 of 23 January 2019, which establishes the unambiguous criterion that a term in a consumer mortgage loan agreement that has not been negotiated and that stipulates that all the costs of arranging the mortgage are to be borne by the borrower is unfair, and which apportions the various expenses that are involved in the unfair term found to be void between the bank that imposed the term and the borrower, in order to limit repayments of amounts wrongly paid under national legislation.

And whether, under Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts, in particular Articles 6(1) and 7(1) of the directive, in order to ensure protection for consumers and users and compliance with the relevant case-law, it is compliant with EU law for the Supreme Court to adopt an inclusive interpretation of a term that is void for unfairness if the term can be severed and its effects abolished without affecting the continued existence of the mortgage loan agreement.

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

Request for a preliminary ruling from the Oberster Gerichtshof (Austria) lodged on 5 April 2019 — DenizBank AG v Verein für Konsumenteninformation

(Case C-287/19)

(2019/C 246/08)

Language of the case: German

Referring court

Oberster Gerichtshof

Parties to the main proceedings

Defendant and appellant in the appeal on a point of law: DenizBank AG

Applicant and defendant in the appeal on a point of law: Verein für Konsumenteninformation

Questions referred

1. Is point (6)(a) of Article 52 in conjunction with Article 54(1) of Directive 2015/2366/EU ([1]) (Payment Services Directive), pursuant to which the payment service user will be deemed to have accepted proposed changes in the conditions unless the payment service user notifies the payment service provider before the date of their proposed date of entry into force that they are not accepted, to be interpreted as meaning that tacit consent can also be agreed with the consumer for any conceivable contractual conditions without any restriction?

2. a) Is point (14) of Article 4 of the Payment Services Directive to be interpreted as meaning that the NFC function of a personalised multifunctional bank card by means of which low value payments are debited from the associated customer account constitutes a payment instrument?

   b) If Question 2.a) is answered in the affirmative:

   Is Article 63(1)(b) of the Payment Services Directive regarding the derogations for low value payments and electronic money to be interpreted as meaning that a contactless low value payment using the NFC function of a personalised multifunctional bank card to be regarded as anonymous use of the payment instrument within the meaning of the derogation?

3. Is Article 63(1)(b) of the Payment Services Directive to be interpreted as meaning that a payment service provider can rely on that derogation only if it can be established, according to the objective state of technical knowledge, that the payment instrument does not allow its blocking or prevention of its further use?

(1) Directive (EU) 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market, amending Directives 2002/65/EC, 2009/110/EC and 2013/36/EU and Regulation (EU) No 1093/2010, and repealing Directive 2007/64/EC (OJ 2015 L 337, p. 35).

Request for a preliminary ruling from the Curtea de Apel Brașov (Romania) lodged on 9 April 2019 — SO v TP and Others

(Case C-291/19)

(2019/C 246/09)

Language of the case: Romanian

Referring court

Curtea de Apel Brașov

Parties to the main proceedings

Appellant: SO

Respondents: TP and Others

Questions referred

1. Must the Cooperation and Verification Mechanism (CVM), established by European Commission Decision 2006/928/EC (1) of 13 December 2006, be regarded as an act of an institution of the Union, within the meaning of Article 267 TFEU, and therefore amenable to interpretation by the Court of Justice of the European Union?

2. Are the requirements set out in the reports drawn up under that mechanism binding on Romania, in particular (but not only) as regards the need to make legislative amendments which comply with the conclusions of the CVM and with the recommendations made by the Venice Commission and the Council of Europe's Group of States against Corruption?

3. Must Article 2, in conjunction with Article 4(3), TEU be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in the reports prepared in accordance with the Cooperation and Verification Mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, forms part of the Member State's obligation to comply with the principles of the rule of law?

4. Does the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and in Article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the case-law of the Court of Justice of the European Union (judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117), preclude the establishment of the section for the investigation of offences committed within the Judiciary, within the prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), in the light of the rules governing the appointment/removal of prosecutors as members of that section, the rules governing the exercise of functions within that section and the way in which jurisdiction is established, in connection with the limited number of positions in that section?

5. Does [the second paragraph of] Article 47 of the Charter of Fundamental Rights of the European Union relating to the right to a fair trial by means of a hearing within a reasonable time, preclude the establishment of a section for investigating offences committed within the judiciary, within the prosecutor's office attached to the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), in the light of the rules governing the exercise of functions within it and the way in which jurisdiction is established, in connection with the limited number of positions in that section?

([1]) Commission Decision of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Request for a preliminary ruling from the Verwaltungsgericht Berlin (Germany) lodged on 19 April 2019 — Ingredion Germany GmbH v Bundesrepublik Deutschland

(Case C-320/19)

(2019/C 246/10)

Language of the case: German

Referring court

Verwaltungsgericht Berlin

Parties to the main proceedings

Applicant: Ingredion Germany GmbH

Defendant: Bundesrepublik Deutschland

Question referred

Are Article 18(1)(c) and the second subparagraph of Article 18(2) of European Commission Decision 2011/278/EU, ([1]) in conjunction with Article 3(h) and Article 10a of Directive 2003/87/EC, ([2]) to be interpreted as meaning that, for new entrants, the capacity utilisation factor relevant for the fuel-related activity level is limited to a value of less than 100 %?

([1]) Commission Decision of 27 April 2011 determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1).

([2]) Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC (OJ 2003 L 275, p. 32).

Request for a preliminary ruling from the Patent- and marknadsdomstolen (Sweden) lodged on 7 May 2019 — Konsumentombudsmannen v Mezina AB

(Case C-363/19)

(2019/C 246/11)

Language of the case: Swedish

Referring court

Patent- and marknadsdomstolen

Parties to the main proceedings

Applicant: Konsumentombudsmannen

Defendant: Mezina AB

Questions referred

1. Do Articles 5 and 6, read in conjunction with Articles 10(1) and 28(5) of Regulation No 1924/2006, ([1]) regulate the burden of proof when a national court is determining whether unpermitted health claims have been made in a situation where the health claims in question correspond to a claim covered by an application under Article 13(2) of Regulation No 1924/2006, but where the application has not yet led to a decision on authorisation or non-authorisation, or is the burden of proof determined according to national law?

2. If the answer to question 1 is that the provisions of Regulation No 1924/2006 regulate the burden of proof, does the burden of proof lie with the trader making a given health claim or with the authority requesting the national court to prohibit the trader from continuing to make the claim?

3. In a situation such as that described in question 1, do Articles 5 and 6, read in conjunction with Articles 10(1) and 28(5) of Regulation No 1924/2006, regulate the evidentiary requirements when a national court is determining whether unpermitted health claims are being made, or are the evidentiary requirements determined according to national law?

4. If the answer to question 3 is that the provisions of Regulation No 1924/2006 regulate the evidentiary requirements, what are the evidentiary requirements imposed?

5. Is the answer to questions 1–4 affected by the fact that Regulation No 1924/2006 (including Article 3(a) of the regulation) and Directive 2005/29 ([2]) can be applied together in the proceedings before the national court?

([1]) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods (OJ 2006 L 404, p. 9).

([2]) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005, L 149, p. 22).

Request for a preliminary ruling from the Tribunalul Bihor (Romania) lodged on 14 May 2019 — Criminal proceedings against IG, JH, KI, LJ

(Case C-379/19)

(2019/C 246/12)

Language of the case: Romanian

Referring court

Tribunalul Bihor

Parties to the main proceedings

IG, JH, KI, LJ

Questions referred

1. Are the Cooperation and Verification Mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, ([1]) and the requirements laid down in reports prepared in accordance with that mechanism binding on Romania?

2. Is Article 2, in conjunction with Article 4(3), of the Treaty on European Union, to be interpreted as meaning that the obligation on Romania to comply with the requirements laid down in reports prepared in accordance with the Cooperation and Verification Mechanism (CVM), established by Commission Decision 2006/928/EC of 13 December 2006, forms part of the Member State's obligation to comply with the principles of the rule of law, including in so far as concerns a constitutional court (a politico-judicial institution) refraining from intervening in order to interpret the law and to establish the specific and mandatory rules for the application of the law by judicial bodies, a task which falls within the exclusive jurisdiction of the judicial authorities, and in order to introduce new legislative measures, a task which falls within the exclusive competence of the legislative authorities? Does EU law require that the effects of any such decision, adopted by a constitutional court, should be disregarded? Does EU law preclude a provision of national law which governs the liability to disciplinary action of the judge who disapplied the decision of the Curtea Constituțională (Constitutional Court), in the context of the question referred?

3. Does the principle of judicial independence, enshrined in the second subparagraph of Article 19(1) TEU and in Article 47 of the Charter of Fundamental Rights of the European Union, as interpreted by the Court of Justice of the European Union (Grand Chamber, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117), preclude the competences of courts being replaced by decisions of the Curtea Constituțională (Decision No 51 of 16 February 2016, Decision No 302 of 4 May 2017 and Decision No 26 [of 16 January 2019]), the result of which is that criminal proceedings are unforeseeable (retroactive application) and that it is impossible to interpret the law and apply it in the case under consideration? Does EU law preclude a provision of national law which governs the liability to disciplinary action of the judge who disapplied the decision of the Curtea Constituțională (Constitutional Court), in the context of the question referred?

([1]) Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ 2006 L 354, p. 56).

Appeal brought on 20 May 2019 by European Commission against the judgment of the General Court (Fifth Chamber) delivered on 7 March 2019 in Case T-837/16, Kingdom of Sweden v European Commission

(Case C-389/19 P)

(2019/C 246/13)

Language of the case: Swedish

Parties

Appellant: European Commission (represented by: R. Lindenthal, K. Mifsud-Bonnici, G. Tolstoy, acting as Agents)

Other parties to the proceedings: Kingdom of Sweden,

Kingdom of Denmark,

Republic of Finland,

European Parliament and

European Chemicals Agency

Form of order sought

— Set aside the judgment delivered by the General Court (Fifth Chamber) on 7 March 2019 in Case T-837/16, *Kingdom of Sweden* v *European Commission*, dismiss the action at first instance and order the Kingdom of Sweden to pay the costs, or, in the alternative,

— Remit the case to the General Court for reconsideration and reserve the costs of the proceedings at first instance and on appeal, and

— Order that the effects of the contested decision be maintained.

Pleas in law and main arguments

The appeal concerns the judgment delivered by the General Court (Fifth Chamber) on 7 March 2019 in Case T-837/16. In that judgment, the General Court annulled Commission Implementing Decision C(2016) 5644 final of 7 September 2016 on authorisations for certain uses of lead sulfochromate yellow and lead chromate molybdate sulfate red, and dismissed the Commission's claim that the effects of the decision should be maintained until the Commission could review the application for authorisation.

The Commission has put forward four grounds in support of its appeal.

The first ground of appeal: In those paragraphs of the judgment relating to the standard of proof to be applied in the analysis of the alternatives, and in particular paragraphs 79, 81, 85, 86, 90 and 101, the General Court made a manifestly incorrect application of the law as regards the standard of proof which is applicable under Article 60(4).

The second ground of appeal: Throughout its reasoning and in particular in paragraphs 86, 90 and 96, the General Court made a manifestly incorrect application of the law in that it wholly disregarded the Commission's discretionary powers to set the threshold value for technical and economic viability in the analysis of the alternatives under Article 60(4) and thus applied an incorrect criterion for the judicial review and interfered in the Commission's weighing up of social, economic and technical considerations.

The third ground of appeal: In paragraphs 86, 97 and 98, the General Court made a manifestly incorrect application of the law with regard to the contested decision, first by failing to have regard to the fact that no authorisation was granted for uses in which the characteristics of lead pigment as regards technical performance is not necessary and, second, by describing the conditions in the contested decision so that they showed that the condition relating to the analysis of the alternatives in Article 60(4) had not been satisfied.

The fourth ground of appeal: The second paragraph of the operative part, in which the General Court ordered that the effects of the contested decision were not to be maintained, is based on a manifestly incorrect application of the law in paragraph 112 of the judgment.

Request for a preliminary ruling from the Tribunal du travail francophone de Bruxelles (Belgium) lodged on 21 May 2019 — PN, QO, RP, SQ, TR v Centre public d'action sociale d'Anderlecht (CPAS)

(Case C-394/19)

(2019/C 246/14)

Language of the case: French

Referring court

Tribunal du travail francophone de Bruxelles

Parties to the main proceedings

Applicants: PN, QO, RP, SQ, TR

Defendant: Centre public d'action sociale d'Anderlecht (CPAS)

Question referred

Is the principle of full effectiveness of the rules of European Law and the protection of those rules, as defined in the *Francovich* and *Brasserie du pêcheur* judgments, in conjunction with Directive 2004/38/EC, [1] to be interpreted as imposing an obligation on a Member State, in circumstances where the right of residence of a foreign national has been withdrawn without prior consideration of proportionality, as a result of an error in transposition into domestic law, to cover, within the framework of its welfare system, the basic needs of the applicant other than medical needs, until the applicant's position as regards the right of residence has been determined in conformity with EU law?

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[1] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (OJ 2004 L 158, p. 77).

Request for a preliminary ruling from the Tribunal d'instance de Nice (France) lodged on 22 May 2019 — VT, WU v easyJet Airline Co. Ltd

(Case C-395/19)

(2019/C 246/15)

Language of the case: French

Referring court

Tribunal d'instance de Nice

Parties to the main proceedings

Applicants: VT, WU

Defendant: easyJet Airline Co. Ltd

Questions referred

1. The applicability of Article 3(2)(a) in the case of delay

   (a) Having regard to the fact that as the result of a case-law construct (judgment of the Fourth Chamber of the Court of Justice of 19 November 2009, *Sturgeon*, C-402/07 and C-432/07, EU:C:2009:716), the right to compensation that Article 7 of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 ([1]) establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 establishes for denied boarding or cancellation was extended to include delayed flights, does the express condition that passengers must present themselves for check-in laid down in Article 3(2)(a) of Regulation (EC) No 261/2004, which applies only in the case of denied boarding, apply in the context of compensation claimed by a passenger who has not been denied boarding but whose flight has been delayed?

   (b) If the answer to question 1(a) is in the affirmative, must the time limit of not later than 45 minutes before the published departure time laid down by Article 3(2)(a) of Regulation (EC) No 261/2004 be interpreted, in that case, as being not later than 45 minutes before the new departure time of the delayed flight published on the airport information boards or communicated to passengers?

2. The burden of proving 'presentation at check-in'

If the answer to question 1(a) is in the affirmative, that is to say, if Article 3(2)(a) of Regulation (EC) No 261/2004 does apply to compensation applied for by a passenger whose flight has been delayed:

Are the conditions established in Article 3(2)(a) preconditions that the consumer must prove to have been satisfied in order for the regulation to apply, or grounds for exonerating the airline by allowing it to produce the passenger list in order to show that the consumer did not present him or herself for check-in "as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time" to which Article 3(2)(a) of Regulation (EC) No 261/2004 refers, in the light of technological developments that now allow boarding cards to be issued electronically, the absence of any time stamp on paper boarding cards, the correlative absence of any obligation for passengers to present themselves physically at a check-in counter and the fact that the airlines alone hold all the information about passenger check-in until check-in operations are closed?

If the answer to question 1(a) is in the affirmative, that is to say, if Article 3(2)(a) of Regulation (EC) No 261/2004 does apply to compensation applied for by a passenger whose flight has been delayed:

Does the burden of proof of the actual presentation of a passenger bringing legal proceedings 'as stipulated and at the time indicated in advance and in writing (including by electronic means) by the air carrier, the tour operator or an authorised travel agent, or, if no time is indicated, not later than 45 minutes before the published departure time' to which Article 3(2)(a) of Regulation (EC) No 261/2004, fall exclusively on the passenger in the light of technological developments that now allow boarding cards to be issued electronically, the absence of any time stamp on paper boarding cards, the correlative absence of any obligation for passengers to present themselves physically at a check-in counter and the fact that the airlines alone hold all the information about passenger check-in until check-in operations are closed?

([1]) Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 (OJ 2004 L 46, p. 1).

Action brought on 24 May 2019 — European Commission v Republic of Slovenia

(Case C-413/19)

(2019/C 246/16)

Language of the case: Slovenian

Parties

Applicant: European Commission (represented by: M. Kocjan and K. Talabér-Ritz)

Defendant: Republic of Slovenia

Form of order sought

The Commission claims that the Court should:

— declare that, by having limited the obligation to demonstrate energy performance to buildings owned or used by public authorities, the Republic of Slovenia has failed to fulfil its obligation under Article 13(2) of the Directive on the energy performance of buildings; ([1])

— order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

Under Article 13(2) of Directive (EU) 2010/31/EU, the Member States must require that where a total useful floor area over 500 m2 of a building for which an energy performance certificate has been issued in accordance with Article 12(1) is frequently visited by the public, the energy performance certificate is displayed in a prominent place clearly visible to the public. Since the Republic of Slovenia has imposed that requirement only for buildings owned or used by public bodies, the Commission has decided to bring an action before the Court.

([1]) Directive 2010/31/EU of the European Parliament and of the Council of 19 May 2010 on the energy performance of buildings (OJ 2010 L 153, p. 13).

GENERAL COURT

Judgment of the General Court of 23 May 2019 — Recylex and Others v Commission

(Case T-222/17) ([1])

(Competition — Agreements, decisions and concerted practices — Market for lead-acid car battery recycling — Decision finding an infringement of Article 101 TFEU — Coordination of purchase prices — Fines — Point 26 of the 2006 Leniency Notice — Point 37 of the Guidelines on the method of setting fines — Unlimited jurisdiction)

(2019/C 246/17)

Language of the case: English

Parties

Applicants: Recylex SA (Paris, France), Fonderie et Manufacture de Métaux SA (Brussels, Belgium), Harz-Metall GmbH (Goslar, Germany) (represented by: M. Wellinger, S. Reinart and K. Bongs, lawyers)

Defendant: European Commission (represented by: I. Rogalski, J. Szczodrowski and F. van Schaik, acting as Agents)

Re:

Application pursuant to Article 263 TFEU for a reduction of the amount of the fine imposed on the applicants in Commission Decision C(2017) 900 final of 8 February 2017 relating to a proceeding under Article 101 TFEU (Case AT.40018 — Car battery recycling).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Recylex SA, Fonderie et Manufacture de Métaux SA and Harz-Metall GmbH to pay the costs.*

([1]) OJ C 195, 19.6.2017.

Judgment of the General Court of 23 May 2019 — KPN v Commission

(Case T-370/17) ([1])

(Competition — Concentrations — Netherlands market for television services and telecommunications services — Full-function joint venture — Decision declaring the concentration compatible with the internal market and the EEA Agreement — Commitments — Relevant market — Vertical effects — Manifest error of assessment — Duty to state reasons)

(2019/C 246/18)

Language of the case: English

Parties

Applicant: KPN BV (The Hague, Netherlands) (represented by: P. van Ginneken and G. Béquet, lawyers)

Defendant: European Commission (represented by: H. van Vliet, G. Conte, J. Szczodrowski and F. van Schaik, acting as Agents)

Interveners in support of the defendant: VodafoneZiggo Group Holding BV (Amsterdam, Netherlands), Vodafone Group plc (Newbury, United Kingdom), Liberty Global Europe Holding BV (Amsterdam) (represented by: W. Knibbeler, E. Raedts and A. Pliego Selie, lawyers)

Re:

Application pursuant to Article 263 TFEU for the annulment of Commission Decision C(2016) 5165 final of 3 August 2016 declaring the concentration involving the acquisition by Vodafone Group and Liberty Global Europe Holding of joint control of a full-function joint venture to be compatible with the internal market and the EEA Agreement (Case COMP/M.7978 — Vodafone — Liberty Global — Dutch JV).

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders KPN BV to bear its own costs and to pay those incurred by the European Commission, VodafoneZiggo Group Holding BV, Vodafone Group plc and Liberty Global Europe Holding BV.*

([1]) OJ C 249, 31.7.2017.

Order of the General Court of 15 May 2019 — Novartis Europharm v Commission

(Case T-269/15) ([1])

(Medicinal products for human use — Marketing authorisation for the medicinal product Vantobra — tobramycine — Withdrawal of the contested measure — Action which has become devoid of purpose — No need to adjudicate)

(2019/C 246/19)

Language of the case: English

Parties

Applicant: Novartis Europharm Ltd (Camberley, United Kingdom) (represented by: C. Schoonderbeek, lawyer)

Defendant: European Commission (represented by: M. Šimerdová, A. Sipos and K. Mifsud-Bonnici, acting as Agents)

Intervener in support of the defendant: Pari Pharma GmbH (Starnberg, Germany) (represented by: M. Epping and W. Rehmann, lawyers)

Re:

Application based on Article 263 TFEU seeking annulment of Commission Implementing Decision C(2015) 1977 final of 18 March 2015 granting marketing authorisation for the medicinal product for human use Vantobra — tobramycine, in accordance with Regulation No 726/2004 of the European Parliament and of the Council,

Operative part of the order

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

2. *Novartis Europharm Ltd shall bear its own costs and pay those incurred by the European Commission.*

3. *Pari Pharma GmbH shall bear its own costs.*

([1]) OJ C 279, 24.8.2015.

Order of the General Court of 17 May 2019 — Deutsche Lufthansa v Commission

(Case T-764/15) ([1])

(Action for annulment — State aid — Measures implemented by Germany in favour of Frankfurt Hahn airport — Decision declaring the aid compatible in part with the internal market — Decision finding that there is no State aid — Indirect aid — No individual concern — Inadmissibility)

(2019/C 246/20)

Language of the case: German

Parties

Applicant: Deutsche Lufthansa (Cologne, Germany) (represented by: A. Martin-Ehlers, lawyer)

Defendant: European Commission (represented by: T. Maxian Rusche, K. Herrmann and D. Recchia, acting as Agents)

Intervener in support of the defendant: Land Rheinland-Pfalz (Germany) (represented by: Professor C. Koenig)

Re:

Action under Article 263 TFEU for the annulment of Commission Decision (EU) 2016/788 of 1 October 2014 on the State aid SA.32833 (11/C) (ex 11/NN) implemented by Germany concerning the financing arrangements for Frankfurt Hahn airport put into place in 2009 to 2011 (OJ 2016, L 134, p. 1).

Operative part of the order

1. *The action is dismissed.*

2. *Deutsche Lufthansa AG shall bear its own costs and pay those of the European Commission and of the Land Rheinland-Pfalz.*

([1]) OJ C 68, 22.2.2016.

Order of the General Court of 22 May 2019 — Puma v EUIPO — CMS (CMS Italy)

(Case T-161/16) ([1])

(EU trade mark — Opposition proceedings — International registration designating the European Union — Figurative mark CMS Italy — Earlier international figurative marks representing a feline bounding to the left — Relative grounds for refusal — Reputation of the earlier marks — Article 8(5) of Regulation (EC) No 207/2009 (now Article 8(5) of Regulation (EU) 2017/1001) — Evidence of reputation — Previous decisions of EUIPO recognising the reputation of the earlier marks — Taking account of those decisions — Obligation to state reasons — Principle of sound administration)

(2019/C 246/21)

Language of the case: English

Parties

Applicant: Puma SE (Herzogenaurach, Germany) (represented by: P. González-Bueno Catalán de Ocón, lawyer)

Defendant: European Union Intellectual Property Office (represented by: D. Walicka, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: Costruzione Macchine Speciali Srl (CMS) (Alonte, Italy)

Re:

Action brought against the decision of the Second Board of Appeal of EUIPO of 29 January 2016 (Case R 229/2015-2), relating to opposition proceedings between Puma and Costruzione Macchine Speciali (CMS).

Operative part of the order

1. *The decision of the Second Board of Appeal of the European Union Intellectual Property Office (EUIPO) of 29 January 2016 (Case R 229/2015-2) is annulled.*

2. *EUIPO shall pay the costs, including those incurred by Puma SE.*

([1]) OJ C 222, 20.6.2016.

Order of the General Court of 15 May 2019 — Metrans v Commission and INEA

(Case T-262/17) ([1])

(Action for annulment — Commission decision granting financing for the 'Multimodal Container Terminal Paskov, Phase III' and 'Intermodal Terminal Mělník, Phases 2 and 3' transport project proposals under the Connecting Europe Facility (CEF) — Period allowed for commencing proceedings — Point from which time starts to run — Delay — Inadmissibility)

(2019/C 246/22)

Language of the case: English

Parties

Applicant: Metrans a.s. (Prague, Czech Republic) (represented by: A. Schwarz, lawyer)

Defendants: European Commission (represented by: J. Hottiaux and J. Samnadda, acting as Agents), Innovation and Networks Executive Agency (represented by: I. Ramallo and D. Silhol, acting as Agents, and A. Duron, lawyer)

Re:

Application under Article 263 TFEU for (i) annulment of Commission Implementing Decision C(2016) 5047 final of 5 August 2016 establishing the list of proposals selected for receiving EU financial assistance in the field of Connecting Europe Facility (CEF) — Transport sector following the calls for proposals launched on 5 November 2015 based on the Multi-Annual Work Programme, in so far as it concerns two proposals entitled 'Multimodal Container Terminal Paskov, Phase III' and 'Intermodal Terminal Mělník, Phases 2 and 3', and (ii) annulment of the two grant agreements relating to those two proposals signed by the INEA.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Metrans a.s. shall bear its own costs and pay those incurred by the European Commission and by the Innovation and Networks Executive Agency (INEA).*

([1]) OJ C 239, 24.7.2017.

Order of the General Court of 6 June 2019 — Czarnecki v Parliament

(Case T-230/18) ([1])

(Law governing the institutions — Member of the European Parliament — Statements made against another Member of Parliament — Early termination of the term of office and duties of the Vice-President of the Parliament — Rights of the defence — Misuse of powers — Equal treatment)

(2019/C 246/23)

Language of the case: French

Parties

Applicant: Ryszard Czarnecki (Warsaw, Poland) (represented by: M. Casado García-Hirschfeld, lawyer)

Defendant: European Parliament (represented by: N. Görlitz, S. Seyr and S. Alonso de León, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of the decision of the Parliament of 7 February 2018 prematurely bringing to an end the applicant's term of office as Vice-President of the Parliament.

Operative part of the order

1. *The action is dismissed.*

2. *Ryszard Czarnecki is ordered to pay the costs, including those relating to the interlocutory proceedings.*

([1]) OJ C 231, 2.7.2018.

Order of the General Court of 23 May 2019 — Fujifilm Recording Media v EUIPO — iTernity (d:ternity)

(Case T-609/18) ([1])

(EU trade mark — Invalidity proceedings — Application for the EU word mark d:ternity — Earlier word mark iTernity — Withdrawal of the application for a declaration of invalidity before the action was brought — Invalidation of the contested decision — No interest in bringing proceedings — Action in part inadmissible and in part manifestly lacking any foundation in law)

(2019/C 246/24)

Language of the case: German

Parties

Applicant: Fujifilm Recording Media (Kleve, Germany) (represented by: R.-D. Härer, C. Schultze, C. Weber, H. Ranzinger and C. Gehweiler, lawyers)

Defendant: European Union Intellectual Property Office (represented by: M. Fischer, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO: iTernity GmbH (Freiburg, Germany)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 July 2018 (Case R 2324/2017-4), relating to invalidity proceedings between iTernity and Fujifilm Recording Media.

Operative part of the order

1. *The action is dismissed.*

2. *Each party shall bear its own costs.*

([1]) OJ C 445, 10.12.2018.

Order of the General Court of 20 May 2019 — Apple v EUIPO — Society for Worldwide Interbank Financial Telecommunication (SWIFT)

(Case T-685/18) ([1])

(EU trade mark — Opposition proceedings — Withdrawal of the application for registration — No need to adjudicate)

(2019/C 246/25)

Language of the case: English

Parties

Applicant: Apple Inc. (Cupertino, California, United States) (represented by: J. Olsen and P. Andreottola, Solicitors)

Defendant: European Union Intellectual Property Office (represented by: H. O'Neill, acting as Agent)

Other party to the proceedings before the Board of Appeal of EUIPO, intervener before the General Court: Society for Worldwide Interbank Financial Telecommunication SCRL (La Hulpe, Belgium) (represented by: G. Glas, lawyer)

Re:

Action brought against the decision of the Fifth Board of Appeal of EUIPO of 30 August 2018 (Case R 476/2018-5), relating to opposition proceedings between Society for Worldwide Interbank Financial Telecommunication SCRL and Apple Inc.

Operative part of the order

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

2. *Apple Inc. and Society for Worldwide Interbank Financial Telecommunication SCRL shall each bear their own costs and shall each pay half of the costs incurred by the European Union Intellectual Property Office (EUIPO).*

([1]) OJ C 25, 21.1.2019.

Order of the General Court of 20 May 2019 — Phreneos and Others v Commission

(Case T-715/18) ([1])

(Public supply contracts — Tender procedure — Planning, preparation, promotion and implementation of the event 'European Development Days' — Rejection of a tenderer's bid and award of the contract to another tenderer — Annulment of the procurement procedure — Action which has become devoid of purpose — No need to adjudicate)

(2019/C 246/26)

Language of the case: English

Parties

Applicant: Phrenos SPRL (Mont-sur-Marchienne, Belgium), Akkanto, (Watermael-Boitsfort, Belgium), Operational Management Solutions (Chaumont Gistoux, Belgium) (represented by: R. Jafferali and R. van Melsen, lawyers)

Defendant: European Commission (represented by: A. Aresu, J. Estrada de Solà and A. Katsimerou, acting as Agents)

Re:

Application pursuant to Article 263 TFEU seeking annulment of the decision of the Commission of 27 November 2018 rejecting the tender submitted by the consortium formed by the applicants in the call for tenders EuropeAid/139729/DH/SER/BE relating to the planning, preparation, promotion and implementation of the 'European Development Days' event for its Directorate-General for International Cooperation and Development, and awarding that contract to another tenderer.

Operative part of the order

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

2. *The European Commission is ordered to pay the costs, including those relating to the interlocutory proceedings, with the exception of those relating to the application by Pomilio Blumm Srl for leave to intervene in the interlocutory proceedings.*

3. *Phrenos SPRL, Akkanto, Operational Management Solutions, the Commission and Pomilio Blumm shall bear their own costs relating to the application by Pomilio Blumm Srl for leave to intervene in the interlocutory proceedings.*

([1]) OJ C 72, 25.2.2019.

Order of the General Court of 7 June 2019 — Telemark plus v EUIPO (Telemarkfest)

(Case T-719/18) ([1])

(EU trade mark — Application for EU word mark Telemarkfest — Absolute ground for refusal — Descriptive character — Article 7(1)(c) of Regulation (EU) 2017/1001)

(2019/C 246/27)

Language of the case: German

Parties

Applicant: Telemark plus eV (Altusried, Germany) (represented by: S. Schenk, lawyer)

Defendant: European Union Intellectual Property Office (represented by: M. Eberl and M. Fischer, acting as Agents)

Re:

Action brought against the decision of the Fourth Board of Appeal of EUIPO of 25 September 2018 (Case R 346/2018-4), concerning an application for registration of the word sign Telemarkfest as an EU trade mark.

Operative part of the order

1. *The action is dismissed as manifestly lacking any foundation in law.*

2. *Telemark plus eV shall pay the costs.*

([1]) OJ C 44, 4.2.2019.

Order of the President of the General Court of 8 May 2019 — AlpaSuri v Commission

(Case T-254/19 R)

(Interlocutory proceedings — Import of alpacas — Application for interim measures — No urgency)

(2019/C 246/28)

Language of the case: German

Parties

Applicant: AlpaSuri GbR Barbara Bruns & Wolfgang Stamp (Winsen, Germany) (represented by: U. Schrömbges, lawyer)

Defendant: European Commission (represented by: B. Eggers and B. Hofstötter, acting as Agents)

Re:

Application under Articles 278 and 279 TFEU seeking interim measures authorising the import of alpacas into the territory of the European Union from Canada.

Operative part of the order

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

2. *The costs are reserved.*

Action brought on 15 April 2019 — Assi v Council

(Case T-256/19)

(2019/C 246/29)

Language of the case: English

Parties

Applicant: Bashar Assi (Damascus, Syria) (represented by: L. Cloquet, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 ([1]), as far as it applies to the applicant;

— annul Council Implementing Regulation (EU) 2019/85 of 21 January 2019 ([2]), as far as it applies to the applicant, and

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on six pleas in law.

1. First plea in law, alleging that a manifest error of assessment of the facts was committed by the defendant stating that the applicant would be supporting the Syrian regime and would be benefiting from it, while such view would be plainly unfounded.

2. Second plea in law, alleging that an infringement of the general principle of proportionality was committed and the measures taken in the contested acts would have such effects that they should be regarded as disproportionate in themselves. The economic consequences of the sanctions made against the applicant would be disastrous and disproportionate compared to the purposes the contested acts would be supposed to reach.

3. Third plea in law, alleging that a disproportionate infringement of the right to property and the right to work was committed, in that the disputed measures would prevent the applicant's peaceful enjoyment of his property and his economic freedom by way of infringing the first additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms.

4. Fourth plea in law, alleging a misuse of powers. The contested acts would have been adopted with the aim of achieving objectives other than those stated herein, namely targeting the applicant himself instead of the regime for reasons that would be unknown to him, and so they would be vitiated by a misuse of powers.

5. Fifth plea in law, alleging that an infringement of the obligation to state reasons laid down in Article 296, paragraph 2, of TFEU was committed. The reasoning given for the contested acts would be, in reality, purely a formality and probably would have not been thought through by the defendant.

6. Sixth plea in law, alleging that an infringement of the rights of defence and right to a fair trial was committed. The applicant would have never been able to secure a hearing prior imposing the disputed restrictive measures, and since he would have been unable to exercise correctly his rights of defence, including his right to a fair trial, notably guaranteed by Article 6, paragraph 3, of the European Convention of Human Rights and Article 48, paragraph 2, of the Charter of Fundamental Rights of the European Union.

([1]) Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria (OJ L 18I, 21.1.2019, p. 13).

([2]) Council Implementing Regulation (EU) 2019/85 of 21 January 2019 implementing Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria (OJ L 18I, 21.1.2019, p. 4).

Action brought on 1 May 2019 — Arbuzov v Council

(Case T-289/19)

(2019/C 246/30)

Language of the case: Czech

Parties

Applicant: Sergej Arbuzov (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as that Decision and that Regulation relate to the applicant; and

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging infringement of the right to sound administration.

   The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of Decision (CFSP) 2019/354 of 4 March 2019, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

   The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

Action brought on 3 May 2019 — Pšonka v Council

(Case T-291/19)

(2019/C 246/31)

Language of the case: Czech

Parties

Applicant: Viktor Pavlovič Pšonka (Kiev, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as that Decision and that Regulation relate to the applicant; and

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the right to sound administration.

   The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of the contested decision, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

   The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging an infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

   The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as was his right to the protection of private property.

Action brought on 3 May 2019 — Pšonka v Council

(Case T-292/19)

(2019/C 246/32)

Language of the case: Czech

Parties

Applicant: Artem Viktorovič Pšonka (Kramatorsk, Ukraine) (represented by: M. Mleziva, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul Council Decision (CFSP) 2019/354 of 4 March 2019 amending Decision 2014/119/CFSP concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, and Council Implementing Regulation (EU) 2019/352 of 4 March 2019 implementing Regulation (EU) No 208/2014 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine, in so far as that Decision and that Regulation relate to the applicant; and

— Declare that the Council of the European Union is to bear its own costs and order it to pay the costs incurred by the applicant.

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging infringement of the right to sound administration.

   The applicant claims in support of his action, inter alia, that the Council of the European Union did not exercise due care and attention in the adoption of the contested decision, since before the adoption of the contested decision it did not address the applicant's arguments and the evidence he had adduced, which supports his case, and it relied primarily on the brief summary by the Prosecutor-General's Office of Ukraine and did not request any supplementary information on the course of the investigations in Ukraine.

2. Second plea in law, alleging an infringement of the applicant's right to property.

   The applicant claims in this connection that the restrictive measures which have been taken against him are disproportionate, go beyond what is necessary and amount to an infringement of guarantees under international law of protection of the applicant's right to property.

3. Third plea in law, alleging an infringement of the applicant's fundamental rights as guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms.

   The applicant claims in this connection that in the adoption of the restrictive measures his rights to a fair trial and to the presumption of innocence were infringed, as was his right to the protection of private property.

Action brought on 14 May 2019 — PNB Banka and Others v ECB

(Case T-301/19)

(2019/C 246/33)

Language of the case: English

Parties

Applicants: PNB Banka AS (Riga, Latvia), CR (*), CT (*) (represented by: O. Behrends and M. Kirchner, lawyers)

Defendant: European Central Bank

Form of order sought

The applicants claim that the Court should:

— annul the ECB's decision of 1 March 2019 to classify PNB Banka as a significant entity;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on ten pleas in law.

1. First plea in law, alleging that the ECB incorrectly assumed that Article 6(5)(b) of the SSM Regulation ([1]) envisages a classification decision.

   — The applicants submit that Article 6(5)(b) of the SSM Regulation merely authorises the ECB to exercise itself all the relevant powers of a national competent authority. Article 39(5), second sentence, of the SSM Framework Regulation ([2]) cannot change the nature of the decision pursuant to Article 6(5)(b) of the SSM Regulation. Were the Court to conclude that Article 39(5), second sentence, of the SSM Framework Regulation changes the nature of that decision, the applicants plead the illegality of the said Article 39(5), second sentence.

2. Second plea in law, alleging that that the ECB based its decision on incorrect assumptions as to the conditions and purpose of Article 6(5)(b) of the SSM Regulation and, inter alia, failed to take into account the exceptional nature of a decision pursuant to that provision.

3. Third plea in law, alleging that the ECB failed to examine and appraise carefully and impartially all the relevant aspects of the individual case in order to determine the necessity of a decision pursuant to Article 6(5)(b) of the SSM Regulation.

4. Fourth plea in law, alleging that the ECB violated several essential procedural requirements.

(*) Information erased or replaced within the framework of protection of personal data and/or confidentiality.

5. Fifth plea in law, alleging that the ECB failed to exercise its discretion pursuant to Article 6(5)(b) of the SSM Regulation.

6. Sixth plea in law, alleging that the ECB violated the principle of proportionality.

7. Seventh plea in law, alleging that the ECB violated the *nemo auditor* principle.

8. Eighth plea in law, alleging that the ECB violated the principle of equal treatment.

9. Ninth plea in law, alleging that the ECB violated the principles of legitimate expectations and legal certainty.

   — The applicants submit that the decision is unclear and therefore creates legal uncertainty and is contrary to the legitimate expectations of PNB Banka based on its prior interactions with the ECB and the Financial and Capital Markets Commission.

10. Tenth plea in law, alleging that that the ECB violated Article 19 of the SSM Regulation and recital 75 of its preamble and committed a *détournement de pouvoir*.

([1]) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ 2013 L 287, p. 63).

([2]) Regulation (EU) No 468/2014 of the European Central Bank of 16 April 2014 establishing the framework for cooperation within the Single Supervisory Mechanism between the European Central Bank and national competent authorities and with national designated authorities (ECB/2014/17) (OJ 2014 L 141, p. 1).

Action brought on 20 May 2019 — BRF Singapore Foods v EUIPO — Tipiak (Sadia)

(Case T-309/19)

(2019/C 246/34)

Language of the case: English

Parties

Applicant: BRF Singapore Foods Pte Ltd (Singapore, Singapore) (represented by: C. Mateu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tipiak (Saint-Aignan de Grand Lieu, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark Sadia in colours black and white — Application for registration No 12 084 356

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 March 2019 in Case R 1834/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order Tipiak to pay the costs.

Pleas in law

— Infringement of general EU principles of the sound administration and equal treatment;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 20 May 2019 — BRF Singapore Foods v EUIPO — Tipiak (SADIA)

(Case T-310/19)

(2019/C 246/35)

Language of the case: English

Parties

Applicant: BRF Singapore Foods Pte Ltd (Singapore, Singapore) (represented by: C. Mateu, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Tipiak (Saint-Aignan de Grand Lieu, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark SADIA — Application for registration No 12 084 273

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 19 March 2019 in Case R 1857/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order Tipiak to pay the costs.

Pleas in law

— Infringement of general EU principles of the sound administration and equal treatment;

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 94(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 22 May 2019 — Taghani v Commission

(Case T-313/19)

(2019/C 246/36)

Language of the case: French

Parties

Applicant: Jamal Taghani (Brussels, Belgium) (represented by: A. Champetier and S. Rodrigues, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

— annul the contested decisions;

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of the action for annulment, first, of the decision of EPSO of 23 July 2018 rejecting his claim for compensation brought in respect of his participation in competition EPSO/AST/111/10 and, secondly, if necessary, of the decision of 14 February 2019 rejecting his complaint, the applicant puts forward two pleas in law.

1. First plea in law, alleging infringement of the second paragraph of Article 340 TFEU and manifest errors of assessment in the defendant's examination of the three conditions required for the Union to incur non-contractual liability.

2. Second plea, alleging infringement of the principle of sound administration, the duty to have regard for the welfare of officials and the obligation to state reasons arising therefrom, on the ground that the defendant did not take a position, in the contested decisions, on the argument made in the complaint relating to two conditions required for the Union to incur non-contractual liability, namely the existence of faults and the causal link.

Action brought on 22 May 2019 — BT v European Commission

(Case T-315/19)

(2019/C 246/37)

Language of the case: French

Parties

Applicant: BT (represented by: J.-N. Louis, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should;

— annul the Commission decision of 20 July 2018 refusing the grant of a survivor's pension to the applicant;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging unlawfulness of the requirement as to the duration of the marriage, fixed at five years by Article 20 of Annex VIII to the Staff Regulations of Officials of the European Union, in that, first, it discriminates arbitrarily between officials in service and retired officials. Secondly, the applicant takes the view that, although the minimum duration requirement of one year is appropriate in combating fraudulent marriages, a minimum duration of five years is itself arbitrary, inadequate and unfair. Thirdly, such a condition can unfairly exclude from the benefit of a survivor's pension the spouse of a deceased official who is nevertheless bound by plans for their life together.

2. Second plea in law, alleging infringement of Article 1(d) of the Staff Regulations of Officials of the European Union.

Action brought on 23 May 2019 — Thunus and Others v EIB

(Case T-318/19)

(2019/C 246/38)

Language of the case: French

Parties

Applicants: Vincent Thunus (Contern, Luxembourg) and 7 applicants (represented by: L. Levi, lawyer)

Defendant: European Investment Bank

Form of order sought

The applicants claim that the Court should:

— declare the present action admissible and well founded, including the plea of illegality which it contains;

— consequently,

  — annul the decision contained in the applicants' pay slips for the month of February 2019, a decision fixing the annual adjustment of the basic salary limited to 0.8% for the year 2019, and, therefore the annulment of the similar decisions contained in the subsequent payslips;

— accordingly, order the defendant

  — to pay compensation for material harm (i) for the outstanding salary corresponding to the application of the annual adjustment for 2019, that is, an increase of 1.2%, for the period from 1 January 2019 to 31 December 2019; (ii) for the outstanding salary corresponding to the consequences of applying the annual adjustment of 0.8% for 2019 on the amount of the salaries which will be paid from January 2019; (iii) for default interest on outstanding salaries due until full payment of the amounts due, the rate of default interest to be applied having to be calculated on the basis of the rate fixed by the European Central Bank for its main refinancing operations, applicable during the relevant period, plus three percentage points;

— If necessary, should the defendant fail to produce them on its own initiative, order it, by way of measures of organisation of the procedure, to produce the following documents:

  — the decision of the Board of Directors of the EIB of 18 July 2017 (CA/505/17);

  — the report of the remuneration subcommittee of the Board of Directors of December 2018;

— the decision of the Board of Directors of 11 December 2018 (Annex 3 to PV/19/01);

— the decision of the Management Committee of 30 January 2019 (MC-018-ADM-20190130);

— the note from the Personnel Directorate of 18 January 2019 (CS-PERS/HRPLC/DIR/2019-001/ABGS);

— order the defendant to pay all of the costs.

Pleas in law and main arguments

In support of the action, the applicants rely respectively, on the one hand, with regard to the decision of the Board of Directors of 18 July 2017, on two pleas in law and, on the other hand, with regard to the decisions of the Management Committee of December 2018 and January 2019, on four pleas in law.

With regard to the decision of the Board of Directors of 18 July 2017:

1. First plea in law, alleging infringement of the principle of legal certainty.

2. Second plea in law, alleging infringement of the principle of the protection of legitimate expectations and of acquired rights.

With regard to the decisions of the Management Committee of December 2018 and January 2019:

1. First plea in law, alleging the lack of competence of the author of the contested act and infringement of Article 18 of the rules of procedure.

2. Second plea in law, alleging infringement of the procedural guarantees under Article 41 of the Charter of Fundamental Rights of the European Union.

3. Third plea in law, alleging infringement of the right of consultation of the College of staff representatives.

4. Fourth plea in law, alleging infringement of the principle of proportionality.

As regards the claim for compensation, the applicants claim payment of the difference in remuneration due, that is 1.2% since 1 January 2019 (including the impact of that increase on financial advantages) plus interest for late payment.

Action brought on 27 May 2019 — BV v Commission

(Case T-320/19)

(2019/C 246/39)

Language of the case: French

Parties

Applicant: BV (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of 17 September 2018 by which the interest generated on the capital representing his transferred pension rights was not returned to him;

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

Pleas in law and main arguments

In support of the action, the applicant relies on three pleas in law.

1. First plea in law, alleging the lack of a legal basis and of reasoning of the contested decision.

2. Second plea in law, alleging infringement of Article 7(6) of the general provisions for the implementation of Article 11(2) of Annex VIII to the Staff Regulations adopted by the Commission.

3. Third plea in law, alleging unjust enrichment in favour of the Union caused by the allocation to the budget of the European Union of the amount deducted in respect of the capital appreciation.

Action brought on 27 May 2019 — El-Qaddafi v Council

(Case T-322/19)

(2019/C 246/40)

Language of the case: English

Parties

Applicant: Aisha Muammer Mohamed El-Qaddafi (Muscat, Oman) (represented by: S. Bafadhel, Barrister)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— annul Council Decision 2017/497/CFSP of 21 March 2017 amending Decision 2015/1333 CFSP concerning restrictive measures in view of the situation in Libya, in so far as it maintains the applicant's name on the list in Annexes I and III to Council Decision 2015/1333/CFSP of 31 July 2015 concerning restrictive measures in view of the situation in Libya;

— annul Council Implementing Regulation (EU) No 2017/489 of 21 March 2019 implementing Article 21(5) of Regulation (EU) No 2016/44 concerning restrictive measures in view of the situation in Libya, in so far as it maintains the applicant's name on the list in Annex II to Council Regulation (EU) 2016/44 of 18 January 2016 concerning restrictive measures in view of the situation in Libya; and

— order the Council of the European Union to pay the costs incurred in relation to the proceedings before the General Court in accordance with the Rules of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on four pleas in law.

1. First plea in law, alleging that the Council of the European Union failed to act in a timely manner concerning the notification of the contested measures in relation to the applicant. This amounted to a violation of an essential procedural requirement related to the right to effective judicial protection which occasioned prejudice to the applicant.

2. Second plea in law, alleging that the Council's decision to relist the applicant is based on identical reasons as concern restrictive measures previously annulled by judgment of the General Court of 28 March 2017 in Case T-681/14, in breach of the principles of res judicata and legal certainty and of the right to an effective remedy.

3. Third plea in law, alleging that the contested acts fail to disclose a lawful basis for maintaining the applicant's listing, notwithstanding the fundamental change in circumstances in Libya. The Council has failed to provide individual, specific and concrete reasons for the contested measures which are not well-founded in any supporting material.

4. Fourth plea in law, alleging that the contested measures violate the applicant's fundamental rights including the right to health, the right to family life, the right to property, and the right to effective defence as safeguarded by the Charter of Fundamental Rights of the European Union.

Action brought on 28 May 2019 — Cipriani v EUIPO — Hotel Cipriani (ARRIGO CIPRIANI)

(Case T-325/19)

(2019/C 246/41)

Language in which the application was lodged: Italian

Parties

Applicant: Arrigo Cipriani (Venice, Italy) (represented by: S. Bergia and G. Sironi, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Hotel Cipriani Srl (Venice, Italy)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant before the General Court

Trade mark at issue: EU figurative mark ARRIGO CIPRIANI — Application for registration No 14 063 838

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 25 March 2019 in Case R 406/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition filed by Hotel Cipriani s.r.l., or refer the case back to EUIPO in order that it may give a decision in accordance with the judgment;

— order full reimbursement of the costs of the present proceedings, including those of the previous procedural stages before EUIPO, in favour of Arrigo Cipriani.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 18 of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 47(2) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;

— Infringement of Article 10(3) of Commission Delegated Regulation (EU) 2018/625.

Action brought on 29 May 2019 — 'Scorify' v EUIPO — Scor (SCORIFY)

(Case T-328/19)

(2019/C 246/42)

Language of the case: English

Parties

Applicant:'Scorify' UAB (Vilnius, Lithuania) (represented by: V. Viešūnaitė, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Scor SE (Paris, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark in colours red, white and dark blue SCORIFY — Application for registration No 16 214 521

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 26 March 2019 in Case R 1639/2018-4

Form of order sought

The applicant claims that the Court should:

— carefully consider the applicant's original pleadings and its grounds of action, and alter the Decision of the Board of Appeal of the European Union Intellectual Property Office, stating that the applicant's appeal submitted to the Board of Appeal of the European Union Intellectual Property Office was justified, thus, the opposition had to be rejected;

— order the other party to bear all the costs paid and incurred by the applicant within the meaning of Articles 134, 139, 140, 190 of the Rules of Procedure of the General Court.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 31 May 2019 — 12seasons v EUIPO — Société Immobilière et Mobilière de Montagny (BE EDGY BERLIN)

(Case T-329/19)

(2019/C 246/43)

Language in which the application was lodged: German

Parties

Applicant: 12seasons GmbH (Berlin, Germany) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Société Immobilière et Mobilière de Montagny (Roanne, France)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant

Trade mark at issue: EU figurative mark BE EDGY BERLIN — EU trade mark No 15 981 921

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 19 March 2019 in Case R 1522/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 60(1)(a) in conjunction with Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 3 June 2019 — Pierre Balmain v EUIPO (Representation of a lion's head encircled by rings forming a chain)

(Case T-331/19)

(2019/C 246/44)

Language of the case: French

Parties

Applicant: Pierre Balmain SAS (Paris, France) (represented by: J. Iglesias Monravá, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark (Representation of a lion's head encircled by rings forming a chain) — Application for registration No 17 515 099

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 March 2019 in Case R 1223/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the registration of EU trade mark No 17 515 099 for the rejected goods in Classes 14 and 26;

— order any party who opposes this action to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and Article 2 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 3 June 2019 — Pierre Balmain v EUIPO (Representation of a lion's head encircled by rings forming a chain)

(Case T-332/19)

(2019/C 246/45)

Language of the case: French

Parties

Applicant: Pierre Balmain SAS (Paris, France) (represented by: J. Iglesias Monravá, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: European Union figurative mark (Representation of a lion's head encircled by rings forming a chain) — Application for registration No 17 515 115

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 21 March 2019 in Case R 1224/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the registration of EU trade mark No 17 515 115 for the rejected goods in Classes 14 and 26;

— order any party who opposes this action to pay the costs.

Plea in law

— Infringement of Article 7(1)(b) and Article 2 of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 30 May 2019 — Ntolas v EUIPO — General Nutrition Investment (GN GENETIC NUTRITION LABORATORIES)

(Case T-333/19)

(2019/C 246/46)

Language of the case: English

Parties

Applicant: Christos Ntolas (Wuppertal, Germany) (represented by: C. Renger, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: General Nutrition Investment Co. (Wilmington, Delaware, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union figurative mark GN GENETIC NUTRITION LABORATORIES — Application for registration No 13 116 678

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 11 March 2019 in Case R 1343/2017-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject the opposition;

— order EUIPO to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Action brought on 3 June 2019 — Cantieri del Mediterraneo v Commission

(Case T-335/19)

(2019/C 246/47)

Language of the case: Italian

Parties

Applicant: Cantieri del Mediterraneo S.p.A. (Naples, Italy) (represented by: F. Munari and L. Calzolari, lawyers)

Defendant: European Commission

Form of order sought

— The applicant claims that the Court should annul Article 1 of the contested decision under Article 263 et seq. TFEU.

Pleas in law and main arguments

This action has been brought against Commission Decision C(2018) 6037 final of 20 September 2018 on State aid SA.36112 (2016/C) (ex 2015/NN) implemented by Italy for the Port Authority of Naples and Cantieri del Mediterraneo S.p.A. ('the contested decision').

In support of the action, the applicant relies on nine pleas in law.

1. First plea in law, alleging infringement of Articles 41, 47 and 48 of the Charter of Fundamental Rights of the European Union and failure to observe the principles of good administration, equal treatment, non-discrimination and the adversarial principle, failure to state reasons and infringement of Article 296 TFEU.

   The applicant claims in this respect that:

   — the contested decision was adopted in proceedings which did not safeguard the rights of defence of Cantieri del Mediterraneo S.p.A. ('CAMED'), since, unlike the complainant, CAMED's views were not heard at a hearing; and

   — the contested decision was adopted at the end of proceedings in which equal treatment of the complainant and the beneficiary of the alleged aid ('equality of arms') was not ensured.

2. Second plea in law, alleging failure to observe the principles of good administration, legal certainty and effective judicial protection as a result of the unlawful revocation of the 2006 decision to take no further action in the proceedings concerning the same measure now classified by the contested decision as aid more than ten years later.

   The applicant claims in this respect that:

   — the contested decision should have declared that the revocation of the 2006 decision to take no further action in the proceedings concerning the same State measure was unlawful and should have found that that decision to take no further action precludes a finding that that measure constitutes State aid incompatible with the internal market; and

— the contested decision should have stated that the [2006] decision to take no further action presupposes that the Commission has determined that the measure at issue is lawful and, therefore, prevents the Commission from adopting a second decision that provides a different classification of the same subject matter more than ten years later.

3. Third plea in law, alleging infringement of Article 107 TFEU by reason of misinterpretation of the concept of State aid in so far as the contested decision classified the Port Authority of Naples ('the PAN') as an undertaking.

The applicant claims in this respect that:

— the contested decision should have stated that the PAN was not an 'undertaking' due to the fact that, under legge n. 84/1994 (Law No 84/1994), all port authorities are public authorities representing the State as regards Italian ports, which are entrusted with the performance of regulatory and administrative tasks in respect of all State property exclusively owned by the State solely in the public interest;

— the contested decision should have stated that the PAN does not engage in 'economic activity' since Law No 84/1994 prohibits it from offering goods or services on a market, which indeed does not exist; and

— the contested decision should have recognised the fiscal nature of the State fee in Italian law and its predetermination in legislation.

4. Fourth plea in law, alleging infringement of Article 345 TFEU and Articles 3, 7 and 121 TFEU, failure to observe multiple principles of EU law (equal treatment) and misuse of powers.

The applicant claims in this respect that:

— the contested decision should have stated that the possibility of carrying out maintenance is a prerogative of the right to property and that the Treaty safeguards the right of the Member States to maintain public ownership of assets and infrastructure, including port assets and infrastructure, and to ensure all entitled persons have access thereto;

— the contested decision cannot horizontally and unreasonably apply the same rules on the maintenance of port infrastructure or fees for the occupation of port areas to situations that are not comparable: the notable differences between the models for management of ports in the European Union mean that the construction of new infrastructure that is exclusively privately owned cannot be treated in the same way as the maintenance of inalienable State property owned by a Member State and managed by that Member State via the public authorities. Such an approach is at odds with the principle of equal treatment; and

— the contested decision cannot pursue the harmonisation of the various organisational models of ports in the European Union by means of the indiscriminate and unreasonable application of Article 107 TFEU.

5. Fifth plea in law, alleging infringement of Article 107 TFEU by reason of misinterpretation of the concept of 'advantage'.

The applicant claims in this respect that:

— the contested decision should have stated that the measure does not reduce the PAN's or CAMED's costs, given that no undertaking normally bears the costs (let alone in their entirety) for the renovation of property that they do not (and cannot) own, since in Italy State property (in all the Italian ports) is owned exclusively by the State; and

— the contested decision should have stated that the State infrastructure was assigned to CAMED following a transparent and competitive public procedure after the PAN undertook to renovate the State property in question. In the procedure used for the assignment of that property to CAMED all potentially interested parties were given the opportunity to obtain that property; carrying out a public procedure ensures compliance with the market operator test, without the successful tenderer receiving any advantage.

6. Sixth plea in law, alleging infringement of Article 107 TFEU, failure to observe the principle of good administration, infringement of CAMED's rights of defence and a defective statement of reasons on account of misinterpretation of selectivity.

The applicant claims in this respect that:

— the contested decision cannot classify the measure as ad hoc aid and must follow the 'selectivity test' for measures of general application;

— the contested decision should have ruled that the measure was not selective as regards the PAN since all the other port authorities benefitted from identical public grants in order to maintain all State infrastructure within their sphere of territorial competence; and

— the contested decision should have ruled that the measure was not selective as regards CAMED since all undertakings operating in an Italian port (not only in Naples and not only in the shipbuilding industry) are subject to the same rules and, therefore, pay the same fee as CAMED for infrastructure built or renovated with public funds.

7. Seventh plea in law, alleging infringement of Article 3 TEU and Article 7 TFEU, infringement of Articles 116 and 117 TFEU, misuse of powers, and lack of jurisdiction for the Commission to contest the fiscal nature and the amount of the State fees.

— The applicant claims in this respect that the contested decision cannot challenge, on the basis of Article 107 TFEU, the amount of the State fee imposed on the concessionaires by the Italian State or claim that it does not correspond with market values, since, in Italian law, State fees are charges set by law that are not negotiated with individual State concessionaires, and tax systems fall within the exclusive jurisdiction of the Member States.

8. Eighth plea in law, alleging infringement of Article 107 TFEU since there is no distortion of competition or adverse effect on trade, and failure to state reasons.

The applicant claims in this respect that:

— the contested decision cannot assume the existence of those two criteria, which are both distinct and cumulative; and

— the contested decision should have ruled that those criteria were not fulfilled since the PAN does not operate on any market and does not have competitors and CAMED has gained no advantage from a measure which is only one of the countless implementing measures of a general plan which has affected all undertakings operating in every Italian port (including Naples), and not only those in the shipbuilding sector.

9. Ninth plea in law, alleging infringement of Article 107(2) and (3) TFEU.

The applicant claims in this respect that:

— the contested decision should have applied Article 107(2) TFEU since the maintenance made good damage caused by bombings during the second world war and by the earthquake of 1980; and

— the contested decision should have applied Article 107(3)(a) and (c) TFEU since (i) the port of Naples is in a disadvantaged region, and (ii) the public financing of the port infrastructure pursues an objective of common interest, particularly given that the amount of the financing is less than the notification threshold under the General Block Exemption Regulation (GBER).

Action brought on 7 June 2019 — Conlance v EUIPO — LG Electronics (SONANCE)

(Case T-343/19)

(2019/C 246/48)

Language in which the application was lodged: German

Parties

Applicant: Conlance GmbH (Augsburg, Germany) (represented by: A. Hayn, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: LG Electronics, Inc. (Seoul, South Korea)

Details of the proceedings before EUIPO

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for EU word mark SONANCE — Application for registration No 14 589 907

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 April 2019 in Case R 1085/2018-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— annul the decision of the Opposition Division of EUIPO of 15 May 2018 in Case No B 2 660 572'*Conlance GmbH* v *LG ELECTRONICS INC.*';

— uphold Opposition Case No B 2 660 572'*Conlance GmbH* v *LG ELECTRONICS INC.*' for all the contested goods;

— reject the EU trade mark application 'SONANCE', No UM 14 589 907;

— order EUIPO to pay the costs of the proceedings, including those incurred in the appeal proceedings.

In the event that another party is intervening in support of the defendant:

— order the other party to pay the costs of the proceedings, including those incurred in the appeal proceedings.

Plea in law

— Infringement of Article 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.

Order of the General Court of 6 June 2019 — JPMorgan Chase and Others v Commission

(Case T-420/18) ([1])

(2019/C 246/49)

Language of the case: English

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

([1]) OJ C 341, 24.9.2018.

Order of the General Court of 22 May 2019 — Bizbike and Hartmobile v Commission

(Case T-426/18) ([1])

(2019/C 246/50)

Language of the case: English

The President of the Ninth Chamber, Extended Composition, has ordered that the case be removed from the register.

([1]) OJ C 341, 24.9.2018.

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