Court of Justice of the European Union

V *Announcements*

COURT PROCEEDINGS

Court of Justice

EN

General Court

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 182/01)

Last publication

OJ C 172, 20.5.2019

Past publications

OJ C 164, 13.5.2019

OJ C 155, 6.5.2019

OJ C 148, 29.4.2019

OJ C 139, 15.4.2019

OJ C 131, 8.4.2019

OJ C 122, 1.4.2019

These texts are available on:

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

V

(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Request for a preliminary ruling from the Landesverwaltungsgericht Oberösterreich (Austria) lodged on 22 August 2018 — DP, Finanzamt Linz

(Case C-545/18)

(2019/C 182/02)

Language of the case: German

Referring court

Landesverwaltungsgericht Oberösterreich

Parties to the main proceedings

Applicants: DP, Finanzamt Linz

Defendant authorities: Bezirkshauptmannschaft Braunau am Inn, Bezirkshauptmannschaft Linz-Land

Interested parties: Finanzamt Braunau-Ried-Schärding, EO

The Court of Justice of the European Union (Eighth Chamber) held in its order of 4 April 2019 that the request for a preliminary ruling referred by decision of the Landesverwaltungsgericht Oberösterreich dated 16 August 2018 is manifestly inadmissible.

Request for a preliminary ruling from the Bundesarbeitsgericht (Germany) lodged on 14 November 2018 — WN v Land Niedersachsen

(Case C-710/18)

(2019/C 182/03)

Language of the case: German

Referring court

Bundesarbeitsgericht

Parties to the main proceedings

Applicant: WN

Defendant: Land Niedersachsen

Question referred

Are Article 45(2) TFEU and Article 7(1) of Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union ([1]) to be interpreted as precluding a provision such as that in Paragraph 16(2) of the Tarifvertrag für den Öffentlichen Dienst der Länder (the Collective Agreement for the public sector of the Länder; 'the TV-L'), pursuant to which the relevant professional experience acquired with the last previous employer has a privileged position in the case where an employee is allocated to the steps of a collective pay structure following re-employment as a result of that professional experience being fully acknowledged pursuant to the second sentence of Paragraph 16(2) of the TV-L, whereas only a maximum of three years of relevant professional experience acquired with other employers is taken into account pursuant to the third sentence of Paragraph 16(2) of the TV-L, if that privileged position is required under EU law by clause 4.4 of the framework agreement on fixed-term contracts concluded on 18 March 1999, which is contained in the annex to Council Directive 1999/70/EC of 28 June 1999 concerning the framework agreement on fixed-term work concluded by ETUC, UNICE and CEEP?

([1]) OJ 2011 L 141, p. 1.

Appeal brought on 17 December 2018 by Pracsis SPRL, Conceptexpo Project against the order of the General Court (Second Chamber) delivered on 3 October 2018 in Case T-33/18, Pracsis and Conceptexpo Project v Commission and EACEA

(Case C-794/18 P)

(2019/C 182/04)

Language of the case: French

Parties

Appellants: Pracsis SPRL, Conceptexpo Project (represented by: J.-N. Louis, avocat)

Other parties to the proceedings: European Commission, Education, Audiovisual and Culture Executive Agency (EACEA)

By order of 11 April 2019, the Court (Seventh Chamber) dismissed the appeal as being, in part, manifestly inadmissible and, in part, manifestly unfounded.

Request for a preliminary ruling from the Arbeitsgericht Hamburg (Germany) lodged on 20 December 2018 — IX v WABE e. V.

(Case C-804/18)

(2019/C 182/05)

Language of the case: German

Referring court

Arbeitsgericht Hamburg

Parties to the main proceedings

Applicant: IX

Defendant: WABE e. V.

Questions referred

1. Does a unilateral instruction from the employer prohibiting the wearing of any visible sign of political, ideological or religious beliefs constitute direct discrimination on the grounds of religion, within the meaning of Article 2(1) and Article 2(2)(a) of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation ([1]), against employees who, due to religious covering requirements, follow certain clothing rules?

2. Does a unilateral instruction from the employer prohibiting the wearing of any visible sign of political, ideological or religious beliefs constitute indirect discrimination on the grounds of religion and/or gender, within the meaning of Article 2(1) and Article 2(2)(b) of Directive 2000/78/EC, against a female employee who, due to her Muslim faith, wears a headscarf?

   In particular:

   (a) Can discrimination on the grounds of religion and/or gender be justified under Directive 2000/78/EC with the employer's subjective wish to pursue a policy of political, ideological and religious neutrality even where the employer thereby seeks to meet the subjective wishes of his customers?

   (b) Do Directive 2000/78/EC and/or the fundamental right of freedom to conduct a business under Article 16 of the Charter of Fundamental Rights of the European Union in view of Article 8(1) of Directive 2000/78/EC preclude a national regulation according to which, in order to protect the fundamental right of freedom of religion, a ban on religious clothing may be justified not simply on the basis of an abstract capacity to endanger the neutrality of the employer, but only on the basis of a sufficiently specific risk, in particular of a specifically threatened economic disadvantage for the employer or an affected third party?

([1]) OJ 2000 L 303, p. 16.

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Lazio (Italy) lodged on 17 January 2019 — Telecom Italia SpA v Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze

(Case C-34/19)

(2019/C 182/06)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Lazio

Parties to the main proceedings

Applicant: Telecom Italia SpA

Defendants: Ministero dello Sviluppo Economico, Ministero dell'Economia e delle Finanze

Questions referred

1. May Article 22(3) of Directive 97/13/EC [1] be interpreted as permitting, including for 1998, the maintenance of an obligation to pay a fee or a charge corresponding (insofar as it is based on the same proportion of turnover) to that which had to be paid under the regime which existed prior to that directive?

2. In light of the Court's judgments of 18 September 2003 in Joined Cases C-292/01 and C-293/01 and of 21 February 2008 in Case C-296/06, does Directive 97/13/EC preclude a final national judgment given on the basis of an incorrect interpretation or misconstruction of that directive, with the result that the ruling in that judgment may be disapplied by a different court hearing a dispute which concerns the same substantive legal relationship but is different in that it concerns a demand for payment that is merely ancillary by comparison with that which was the subject of the case which led to the incorrect ruling?

[1] Directive 97/13/EC of the European Parliament and of the Council of 10 April 1997 on a common framework for general authorizations and individual licences in the field of telecommunications services (OJ 1997 L 117, p. 15).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 21 January 2019 — CV v Iccrea Banca SpA Istituto Centrale del Credito Cooperativo

(Case C-37/19)

(2019/C 182/07)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: CV

Respondent: Iccrea Banca SpA Istituto Centrale del Credito Cooperativo

Question referred

Must Article 7(2) of Directive 2003/88/EC ([1]) and Article 31(2) of the Charter of Fundamental Rights of the European Union, taken separately where applicable, be interpreted as precluding provisions of national legislation or national practices pursuant to which, once the employment relationship has ended, the right to payment of an allowance for paid leave accrued but not taken (and for a legal arrangement, such as 'abolished public holidays', which is comparable in nature and function to paid annual leave) does not apply in a context where the worker was unable to take the leave before the employment relationship ended because of an unlawful act (a dismissal established as unlawful by a national court by means of a final ruling ordering the retroactive restoration of the employment relationship) attributable to the employer, for the period between that unlawful act by the employer and the subsequent reinstatement only?

([1]) Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time (OJ 2003 L 299, p. 9).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 5 February 2019 — Rieco SpA v Comune di Lanciano, Ecolan SpA

(Case C-89/19)

(2019/C 182/08)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Rieco SpA

Respondents: Comune di Lanciano, Ecolan SpA

Questions referred

1. Does EU law (in particular the principle of free administration by public authorities and the principle that the different rules governing the award of service contracts and the management of services relevant to public authorities must be essentially equivalent) preclude a national law (such as that set out in Article 192(2) of the Italian Public Procurement Code, Legislative Decree No 50 of 2016), which places the in-house award of contracts on a subordinate level to award by means of public tender procedure and establishes it as an exception to the latter, by: (i) permitting contracts to be awarded in house only when there is clear evidence of failure in the relevant market, and (ii) requiring authorities intending to make an award by inter-organisational delegation to provide specific reasons with regard to the benefits for society at large accruing from that form of award?

2. Does EU law (in particular Article 12(3) of Directive 2014/24/EU [1]) concerning the in-house award of contracts where similar control is exercised jointly with other authorities) preclude a provision of national law (such as that set out in Article 4(1) of the Consolidated Law concerning companies in which all or a majority of the share capital is in public ownership — Legislative Decree No 175 of 2016) which prevents a public authority from acquiring a shareholding (in any event one that can guarantee control or power of veto) in a body in which a number of other public authorities have shareholdings, where that authority intends in any event to acquire subsequently a position of joint control and therefore the possibility of making direct awards to that body in which a number of other public authorities have shareholdings?

[1] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 5 February 2019 — Rieco SpA v Comune di Ortona, Ecolan SpA

(Case C-90/19)

(2019/C 182/09)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Rieco SpA

Respondents: Comune di Ortona, Ecolan SpA

Questions referred

1. Does EU law (in particular the principle of free administration by public authorities and the principle that the different rules governing the award of service contracts and the management of services relevant to public authorities must be essentially equivalent) preclude a national law (such as that set out in Article 192(2) of the Italian Public Procurement Code, Legislative Decree No 50 of 2016), which places the in-house award of contracts on a subordinate level to award by means of public tender procedure and establishes it as an exception to the latter, by: (i) permitting contracts to be awarded in house only when there is clear evidence of failure in the relevant market, and (ii) requiring authorities intending to make an award by inter-organisational delegation to provide specific reasons with regard to the benefits for society at large accruing from that form of award?

2. Does EU law (in particular Article 12(3) of Directive 2014/24/EU [1]) concerning the in-house award of contracts where similar control is exercised jointly with other authorities) preclude a provision of national law (such as that set out in Article 4(1) of the Consolidated Law concerning companies in which all or a majority of the share capital is in public ownership — Legislative Decree No 175 of 2016) which prevents a public authority from acquiring a shareholding (in any event one that can guarantee control or power of veto) in a body in which a number of other public authorities have shareholdings, where that authority intends in any event to acquire subsequently a position of joint control and therefore the possibility of making direct awards to that body in which a number of other public authorities have shareholdings?

[1] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 5 February 2019 — Rieco SpA v Comune di San Vito Chietino, Ecolan SpA

(Case C-91/19)

(2019/C 182/10)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Rieco SpA

Respondents: Comune di San Vito Chietino, Ecolan SpA

Questions referred

1. Does EU law (in particular the principle of free administration by public authorities and the principle that the different rules governing the award of service contracts and the management of services relevant to public authorities must be essentially equivalent) preclude a national law (such as that set out in Article 192(2) of the Italian Public Procurement Code, Legislative Decree No 50 of 2016), which places the in-house award of contracts on a subordinate level to award by means of public tender procedure and establishes it as an exception to the latter, by: (i) permitting contracts to be awarded in house only when there is clear evidence of failure in the relevant market, and (ii) requiring authorities intending to make an award by inter-organisational delegation to provide specific reasons with regard to the benefits for society at large accruing from that form of award?

2. Does EU law (in particular Article 12(3) of Directive 2014/24/EU [1] concerning the in-house award of contracts where similar control is exercised jointly with other authorities) preclude a provision of national law (such as that set out in Article 4(1) of the Consolidated Law concerning companies in which all or a majority of the share capital is in public ownership — Legislative Decree No 175 of 2016) which prevents a public authority from acquiring a shareholding (in any event one that can guarantee control or power of veto) in a body in which a number of other public authorities have shareholdings, where that authority intends in any event to acquire subsequently a position of joint control and therefore the possibility of making direct awards to that body in which a number of other public authorities have shareholdings?

[1] Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 5 February 2019 — Burgo Group SpA v Gestore dei Servizi Energetici — GSE

(Case C-92/19)

(2019/C 182/11)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Appellant: Burgo Group SpA

Respondent: Gestore dei Servizi Energetici — GSE

Questions referred

1. Does Directive 2004/8/EC [1] (in particular Article 12 thereof) preclude an interpretation of Articles 3 and 6 of Legislative Decree No 20/2007 as allowing the benefits referred to in Legislative Decree No 79/1999 (in particular in Article 11 thereof and in Decision No 42/02 of 19 March 2002 of the Autorità dell'energia elettrica e del gas (Electricity and Gas Authority) which constitutes implementation of the preceding provision) to be granted also to non-high-efficiency cogeneration installations even beyond 31 December 2010?

2. Does Article 107 TFEU preclude an interpretation of Articles 3 and 6 of Legislative Decree No 20/2007, in the sense set out under [1] above, in so far as those provisions, as thus interpreted, might constitute 'State aid' and therefore be incompatible with the principle of free competition?

3. In line with what is set out under [1] and [2] above, and having regard to what is expressly put forward by the appellant, does a provision of national law which allows support schemes to continue to be granted to non-high-efficiency cogeneration until 31 December 2015 comply with the EU-law principles of equal treatment and non-discrimination, since that could be the interpretation of domestic Italian law as a result of Article 25(11)(c)(1) of Legislative Decree No 28 of 3 March 2011, which repeals the abovementioned provisions of Article 11 of Legislative Decree No 79/1999 with effect from 1 January 2016, or rather now by 19 July 2014 (as a result of Article 10(15) of Legislative Decree No 102 of 4 July 2014)?

([1]) Directive 2004/8/EC of the European Parliament and of the Council of 11 February 2004 on the promotion of cogeneration based on a useful heat demand in the internal energy market and amending Directive 92/42/EEC (OJ 2004 L 52, p. 50).

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 6 February 2019 — San Domenico Vetraria SpA v Agenzia delle Entrate

(Case C-94/19)

(2019/C 182/12)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: San Domenico Vetraria SpA

Respondent: Agenzia delle Entrate

Question referred

Must Articles 2 and 6 of Sixth Council Directive 77/388/EEC of 17 May 1977 ([1]) and the principal of fiscal neutrality be interpreted as precluding national legislation under which the lending or secondment of staff by a parent company in respect of which the subsidiary merely reimburses the related costs is regarded as irrelevant for value added tax purposes?

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

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 6 February 2019 — Agenzia delle Dogane v Silcompa SpA

(Case C-95/19)

(2019/C 182/13)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Agenzia delle Dogane

Respondent and cross-appellant: Silcompa SpA

Question referred

Is Article 12(3) of Council Directive 76/308/EEC on mutual assistance for the recovery of claims relating to certain levies, duties, taxes and other measures ([1]), as amended by Council Directive 2001/44/EC ([2]), read in conjunction with Article 20 of Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products ([3]), to be interpreted as meaning that, in proceedings brought against enforcement measures for the collection of excise duty, the court may examine (and if so within what limits) the question of the place (of actual release for consumption) where the irregularity or offence was actually committed where, as in the present case, the same claim, based on the same export transactions, is made, independently, against the taxable person by both the applicant State and the requested State and, in the requested State, proceedings are pending, contemporaneously, both in respect of the national claim and the action for the collection of duties for the other State, and would the court's finding in that regard invalidate the request for assistance and consequently all the enforcement measures?

---

(1) Council Directive 76/308/EEC of 15 March 1976 on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of the agricultural levies and customs duties (OJ 1976 L 73, p. 18).

(2) Council Directive 2001/44/EC of 15 June 2001 amending Directive 76/308/EEC on mutual assistance for the recovery of claims resulting from operations forming part of the system of financing the European Agricultural Guidance and Guarantee Fund, and of agricultural levies and customs duties and in respect of value added tax and certain excise duties (OJ 2001 L 175, p. 17).

(3) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1).

Request for a preliminary ruling from the Finanzgericht Düsseldorf (Germany) lodged on 8 February 2019 — Pfeifer & Langen GmbH & Co. KG v Hauptzollamt Köln

(Case C-97/19)

(2019/C 182/14)

Language of the case: German

Referring court

Finanzgericht Düsseldorf

Parties to the main proceedings

Applicant: Pfeifer & Langen GmbH & Co. KG

Defendant: Hauptzollamt Köln

Question referred

Is Article 78(3) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code ([1]) to be interpreted as meaning that, according to that provision, in a case such as that in the main proceedings, a customs declaration must be checked and corrected in such a way that the particulars relating to the declarant are replaced by the designation of the person to whom an import licence was issued for the imported goods, and this person is represented by the person who was named as the declarant in the customs declaration and who has submitted a power of attorney from the holder of the import licence to the customs office?

([1]) OJ 1992 L 302, p. 1.

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 February 2019 — Raggio di Sole Società Cooperativa Onlus v Comune di Cisternino, Consorzio per l'Inclusione Sociale dell'Ats Fasano — Ostuni — Cisternino

(Case C-109/19)

(2019/C 182/15)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Raggio di Sole Società Cooperativa Onlus

Defendants: Comune di Cisternino, Consorzio per l'Inclusione Sociale dell'Ats Fasano — Ostuni — Cisternino

Question referred

Does EU law (in particular the principles of legitimate expectations, legal certainty, freedom of movement, freedom of establishment and freedom to provide services) preclude a national legislative provision, such as Article 83(9), Article 95(10) and Article 97(5) of the Italian 'Codice dei contratti pubblici' (Public Procurement Code), under which failure to indicate labour costs and costs relating to the safety of workers by a tenderer in a public procurement procedure results in any event in the tenderer being excluded from the procedure without the tenderer being given, at a later stage, the benefit of the '*soccorso istruttorio*' procedure [whereby a tenderer is given an opportunity to remedy shortcomings in his tender documentation after submission of his tender], even where the existence of such an obligation to indicate those costs is apparent from sufficiently clear legal provisions in the public domain and irrespective of the fact that the contract notice does not expressly refer to the legal obligation to provide specific information?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 February 2019 — Raggio di Sole Società Cooperativa Onlus v Comune di Ostuni, Consorzio per l'Inclusione Sociale dell'Ats Fasano — Ostuni — Cisternino

(Case C-110/19)

(2019/C 182/16)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Raggio di Sole Società Cooperativa Onlus

Defendants: Comune di Ostuni, Consorzio per l'Inclusione Sociale dell'Ats Fasano — Ostuni — Cisternino

Question referred

Does EU law (in particular the principles of legitimate expectations, legal certainty, freedom of movement, freedom of establishment and freedom to provide services) preclude a national legislative provision, such as Article 83(9), Article 95(10) and Article 97(5) of the Italian 'Codice dei contratti pubblici' ('Public Procurement Code'), under which failure to indicate labour costs and costs relating to the safety of workers by a tenderer in a public procurement procedure results in any event in the tenderer being excluded from the procedure without the tenderer being given, at a later stage, the benefit of the 'soccorso istruttorio' procedure (whereby a tenderer is given an opportunity to remedy shortcomings in his tender documentation after submission of his tender), even where the existence of such an obligation to indicate those costs is apparent from sufficiently clear legal provisions in the public domain and irrespective of the fact that the contract notice does not expressly refer to the legal obligation to provide specific information?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 11 February 2019 — Industria Italiana Autobus SpA v Comune di Palermo

(Case C-111/19)

(2019/C 182/17)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Industria Italiana Autobus SpA

Defendant: Comune di Palermo

Question referred

Does EU law (in particular the principles of legitimate expectations, legal certainty, freedom of movement, freedom of establishment and freedom to provide services) preclude a national legislative provision, such as Article 83(9), Article 95(10) and Article 97(5) of the Italian 'Codice dei contratti pubblici' ('Public Procurement Code'), under which failure to indicate labour costs and costs relating to the safety of workers by a tenderer in a public procurement procedure results in any event in the tenderer being excluded from the procedure without the tenderer being given, at a later stage, the benefit of the '*soccorso istruttorio*' procedure (whereby a tenderer is given an opportunity to remedy shortcomings in his tender documentation after submission of his tender), even where the existence of such an obligation to indicate those costs is apparent from sufficiently clear legal provisions in the public domain and irrespective of the fact that the contract notice does not expressly refer to the legal obligation to provide specific information?

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 18 February 2019 — Azienda Sanitaria Provinciale di Catania v Assessorato della Salute della Regione Siciliana

(Case C-128/19)

(2019/C 182/18)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Azienda Sanitaria Provinciale di Catania

Respondent: Assessorato della Salute della Regione Siciliana

Questions referred

1. On the basis of Articles 87 and 88 of the EC Treaty — and now Articles 107 and 108 TFEU — and the 'Community Guidelines for State aid in the agriculture sector' contained in Information from the Commission 2000/C 28/02, published in the *Official Journal of the European Communities* (OJ C 28, p. 2) of 1 February 2000, does the measure set out in Article 25(16) of Sicilian Regional Law No [19] of 22 December 2005, under which, 'in pursuit of the objectives laid down in Article 1 of Sicilian Regional Law No 12 of 5 June 1989, pursuant to and in accordance with the provisions of Article 134 of Regional Law No 32 of 23 December 2000, expenditure of EUR 20 000 000 is authorised for the payment of amounts due from local health authorities in Sicily to owners of animals slaughtered as a result of being affected by infectious and widespread diseases in the period between 2000 and 2006, and for payment of the fee to veterinary professionals involved in the remediation activities during that period. For the purposes of this paragraph, the expenditure of EUR 10 000 000 (base provision 10.3.1.3.2, chapter 417702) is authorised for the 2005 financial year. For subsequent financial years, arrangements shall be made pursuant to Article 3(2)(i) of Regional Law No 10 of 27 April 1999, as amended', constitute State aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods?

2. Although the provision laid down in Article 25(16) of Sicilian Regional Law No 19 of 22 December 2005, under which, 'in pursuit of the objectives laid down in Article 1 of Sicilian Regional Law No 12 of 5 June 1989, pursuant to and in accordance with the provisions of Article 134 of Regional Law No 32 of 23 December 2000, expenditure of EUR 20 000 000 is authorised for the payment of amounts due from local health authorities in Sicily to owners of animals slaughtered as a result of being affected by infectious and widespread diseases in the period between 2000 and 2006, and for payment of the fee to veterinary professionals involved in the remediation activities during that period. For the purposes of this paragraph, the expenditure of EUR 10 000 000 (base provision 10.3.1.3.2, chapter 417702) is authorised for the 2005 financial year. For subsequent financial years, arrangements shall be made pursuant to Article 3(2)(i) of Regional Law No 10 of 27 April 1999, as amended', might in principle constitute State aid which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods, can this nonetheless be recognised as being compatible with Articles 87 and 88 of the EC Treaty (and now with Articles 107 and 108 TFEU) in view of the reasons that led the European Commission, by means of its Decision C(2002)4786 of 6 December 2002, to take the view, where the criteria provided for in the Community Guidelines for State aid in the agriculture sector contained in Information from the Commission 2000/C 28/02, published in the *Official Journal of the European Communities* (OJ C 28, p. 2) of 1 February 2000, are met, that similar provisions contained in Articles 11 of Sicilian Regional Law No 40/1997 and Article 7 of Regional Law No 22/1999 were compatible with Articles 87 and 88 EC?

Request for a preliminary ruling from the Corte suprema di cassazione (Italy) lodged on 19 February 2019 — Presidenza del Consiglio dei Ministri v BV

(Case C-129/19)

(2019/C 182/19)

Language of the case: Italian

Referring court

Corte suprema di cassazione

Parties to the main proceedings

Appellant: Presidenza del Consiglio dei Ministri

Respondent: BV

Questions referred

The Court of Justice of the European Union is requested to rule [in the specific circumstances in the main proceedings concerning an action for damages, brought by an Italian citizen ordinarily resident in Italy, against the legislator State on grounds of non-fulfilment and/or incorrect fulfilment and/or incomplete fulfilment of the obligations laid down in Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims ([1]), and, in particular, the obligation, set out in Article 12(2) thereof, on the Member States to introduce, by 1 July 2005 (as laid down in the subsequent Article 18(1)) a general scheme of compensatory protection capable of guaranteeing fair and appropriate compensation to the victims of any violent and intentional crimes (including the crime of sexual violence of which the party concerned was victim), in cases where such victims are unable to obtain, from those directly responsible, full compensation for the damaged sustained] on the following questions:

1. In relation to the situation of late (and/or incomplete) implementation in the national legal system of Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims, which is non-self-executing as regards the establishment, required by it, of a scheme for compensation for the victims of violent crimes, which gives rise, in relation to cross-border persons, who are the sole addressees of the directive, to a liability on the part of the Member State to pay compensation in accordance with the principles set out in the case-law of the Court of Justice (inter alia the judgments in *Francovich* and *Brasserie du Pêcheur and Factortame III*), does [EU] law require that a similar liability be imposed on the Member State in relation to non-cross-border (and thus resident) persons, who are not the direct addressees of the benefits deriving from implementation of the directive but who, in order to avoid infringement of the principle of equal treatment/non-discrimination in that [EU] law, should have and could have — if the directive had been implemented in full and in good time — benefited, by extension, from the *effet utile* of that directive (that is to say, the abovementioned compensation scheme)?

If the answer to the preceding question is in the affirmative:

2. Can the compensation established for the victims of violent intentional crimes (and in particular the crime of sexual violence referred to in Article 609-*bis* of the Italian Criminal Code) by the Decree of the Minister for the Interior of 31 August 2017 [issued pursuant to Article 11(3) of Law No 122 of 7 July 2016 on provisions to comply with the obligations arising from Italy's membership of the European Union — European Law 2015-2016, with subsequent amendments (referred to in Article 6 of Law No 167 of 20 November 2017 and Article 1(593) to (596) of Law No 145 of 30 December 2018)] in the fixed amount of EUR 4 800 be regarded as 'fair and appropriate compensation to victims' within the meaning of Article 12(2) of Directive 2004/80?

([1]) Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15).

Appeal brought on 15 February 2019 by the European Commission against the judgment of the General Court (Third Chamber) delivered on 13 December 2018 in Case T-743/16 RENV, CX v Commission

(Case C-131/19 P)

(2019/C 182/20)

Language of the case: French

Parties

Appellant: European Commission (represented by: G. Berscheid, T. S. Bohr and C. Ehrbar, Agents)

Other party to the proceedings: CX

Form of order sought

The Commission claims that the Court should:

— set aside the judgment of the General Court of 13 December 2018 in Case T-743/16 RENV, *CX* v *Commission*, in so far as it annulled the disciplinary decision of removal from post;

— refer the case back to the General Court for a ruling on the other pleas in law of the action;

— reserve the costs.

Grounds of appeal and main arguments

First ground of appeal: misapplication of Articles 4 and 22 of Annex IX to the Staff Regulations of Officials in incorrectly interpreting the scope of the right to appear in person.

The arguments in support of the first ground of appeal are divided into several parts.

In the first part, the Commission submits that the judgment failed to have regard to the legal criteria applicable for the purpose of assessing the official's inability to appear in person, the duty to state reasons and the rules governing burden of proof.

In the second part, the Commission submits that the judgment incorrectly applied the concept of a body of consistent evidence in order to establish that the official was unable to appear at the hearings and that the General Court carried out an incomplete examination of the relevant evidence.

In the third part, the Commission maintains that the judgment distorted the clear sense of two pieces of evidence.

Second ground of appeal: misapplication of Articles 4 and 22 of Annex IX to the Staff Regulations of Officials in incorrectly interpreting the scope of the right to be heard in writing or through a representative.

The arguments in support of the second ground of appeal are divided into two parts.

The first part relates to the failure to have regard to the legal criteria applicable for the purpose of assessing the official's inability to submit his comments in writing or through a representative, the failure to have regard to the duty to state reasons, the failure to have regard to the rules governing burden of proof as regards the official's inability to defend himself at the hearings and the incorrect application of the concept of a body of consistent evidence.

The second part relates to the inconsistency of the reasons concerning the official's inability to ensure his defence.

Third ground of appeal: failure to have regard to the duty to state reasons regarding the consequences of the infringement of the right to be heard.

The General Court failed to state reasons why the procedural irregularity flowing from the infringement of the right to be heard led to the annulment of the decision at issue.

Request for a preliminary ruling from the Tribunal Supremo (Spain) lodged on 20 February 2019 — Atresmedia Corporación de Medios de Comunicación, S.A. v Asociación de Gestión de Derechos Intelectuales (AGEDI) and Artistas e Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE)

(Case C-147/19)

(2019/C 182/21)

Language of the case: Spanish

Referring court

Tribunal Supremo

Parties to the main proceedings

Appellant: Atresmedia Corporación de Medios de Comunicación, S.A.

Respondents: Asociación de Gestión de Derechos Intelectuales (AGEDI) and Artistas e Intérpretes o Ejecutantes, Sociedad de Gestión de España (AIE)

Questions referred

1. Does the concept of the 'reproduction of a phonogram published for commercial purposes' referred to in Article 8(2) of Directives 92/100 ([1]) and 2006/115 ([2]) include the reproduction of a phonogram published for commercial purposes in an audiovisual recording containing the fixation of an audiovisual work?

2. In the event that the answer to the previous question is in the affirmative, is a television broadcasting organisation which, for any type of communication to the public, uses an audiovisual recording containing the fixation of a cinematographic or audiovisual work in which a phonogram published for commercial purposes has been reproduced, under an obligation to pay the single equitable remuneration provided for in Article 8(2) of the aforementioned directives?

---

(1) Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 1992 L 346, p. 61).
(2) Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property (OJ 2006 L 376, p. 28).

Appeal brought on 19 February 2019 by BTB Holding Investments SA and Duferco Participations Holding SA against the judgment of the General Court (First Chamber) delivered on 11 December 2018 in Case T-100/17, BTB Holding Investments SA and Duferco Participations Holding SA v Commission

(Case C-148/19 P)

(2019/C 182/22)

Language of the case: French

Parties

Appellants: BTB Holding Investments SA, Duferco Participations Holding SA (represented by: J.-F. Bellis, R. Luff, M. Favart, Q. Declève, avocats)

Other parties to the proceedings: European Commission, Foreign Strategic Investments Holding (FSIH)

Form of order sought

The appellants submit that the Court should:

— Set aside the judgment of the General Court of 11 December 2018, *BTB Holding Investments and Duferco Participations Holding* v *Commission* (T-100/17);

— Refer the case back to the General Court;

— Order the defendant to pay the costs of these proceedings and the costs of the proceedings before the General Court.

Grounds of appeal and main arguments

By their appeal against judgment T-100/17, the appellants submit that, in the judgment under appeal, the General Court infringed their right to a fair hearing when it stated that, 'in order to establish that the Commission made a manifest error in the [complex economic] assessment of the facts justifying the annulment of the contested decision, the evidence adduced by the applicant must be sufficient to make the assessment of the facts in the decision at issue implausible'. The appellants submit that, in particular, the General Court infringed the principles relating to the burden of proof and the principle of equality of arms.

Request for a preliminary ruling from the Amtsgericht Köln (Germany) lodged on 22 February 2019 — FZ v DER Touristik GmbH

(Case C-153/19)

(2019/C 182/23)

Language of the case: German

Referring court

Amtsgericht Köln

Parties to the main proceedings

Applicant: FZ

Defendant: DER Touristik GmbH

Question referred

Do a traveller's claims against a travel organiser, under a contract for travel, for a price reduction because of shortcomings in the flight on account of a flight delay constitute claims to further compensation under Article 12 of Regulation No 261/2004 ([1]), and can compensation granted as a result of the flight delay in application *mutatis mutandis* of Article 7 of the Regulation be deducted from those claims in accordance with Article 12 of that regulation?

([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 Landessozialgericht Nordrhein-Westfalen (Germany) lodged on 25 February 2019 — JD v Jobcenter Krefeld — Widerspruchsstelle

(Case C-181/19)

(2019/C 182/24)

Language of the case: German

Referring court

Landessozialgericht Nordrhein-Westfalen

Parties to the main proceedings

Applicant: JD

Defendant: Jobcenter Krefeld — Widerspruchsstelle

Questions referred

1. Is the exclusion of Union citizens having a right of residence under Article 10 of Regulation No 492/2011 ([1]) from receipt of social assistance within the meaning of Article 24(2) of Directive 2004/38 ([2]) compatible with the requirement of equal treatment arising from Article 18 TFEU read in conjunction with Articles 10 and 7 of Regulation No 492/2011?

   (a) Does social assistance within the meaning of Article 24(2) of Directive 2004/38 constitute a social advantage within the meaning of Article 7(2) of Regulation No 492/2011?

   (b) Does the limitation set out in Article 24(2) of Directive 2004/38 apply to the requirement of equal treatment arising from Article 18 TFEU read in conjunction with Articles 10 and 7 of Regulation No 492/2011?

2. Is the exclusion of Union citizens from receipt of special non-contributory cash benefits within the meaning of Articles 3(3) and 70(2) of Regulation No 883/2004 ([3]) compatible with the requirement of equal treatment arising from Article 18 TFEU read in conjunction with Article 4 of Regulation No 883/2004 if those citizens have a right of residence arising from Article 10 of Regulation No 492/2011 and are integrated into a social security system or family benefits system within the meaning of Article 3(1) of Regulation No 883/2004?

(1) Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union Text with EEA relevance (OJ 2011 L 141, p. 1).

(2) 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).

(3) Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ 2004 L 166, p. 1).

Request for a preliminary ruling from the Bundesverwaltungsgericht (Germany) lodged on 26 February 2019 — Spenner GmbH & Co. KG v Bundesrepublik Deutschland

(Case C-189/19)

(2019/C 182/25)

Language of the case: German

Referring court

Bundesverwaltungsgericht

Parties to the main proceedings

Applicant and appellant on a point of law: Spenner GmbH & Co. KG

Defendant and respondent in the appeal on a point of law: Bundesrepublik Deutschland

Questions referred

1. Does Article 9(9) of Commission Decision 2011/278/EU 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 ([1]) presuppose that the significant capacity extension of an incumbent installation has taken place within the baseline period determined by the Member State in accordance with Article 9(1) of that decision?

2. As regards significant capacity extensions, is the first subparagraph of Article 9(9) of Decision 2011/278/EU, read in conjunction with Article 9(1) thereof, to be interpreted as meaning that, for the purposes of determining the historical activity levels for the baseline period from 1 January 2009 to 31 December 2010, the historical activity levels of the added capacity are to be left out of account (even) if the significant capacity extension took place in the baseline period from 1 January 2005 to 31 December 2008?

3. (a) If Question 1 is to be answered in the affirmative:

   Is Article 9(1) of Decision 2011/278/EU to be interpreted as meaning that the competent authority of the Member State must itself determine the baseline period from 1 January 2005 to 31 December 2008 or from 1 January 2009 to 31 December 2010 or may the Member State confer on the operator the right to choose the baseline period?

   (b) In the event that the Member State may confer on the operator the right to choose:

   Must the Member State take into account the baseline period leading to the higher activity level of each installation even if the operator has the freedom under national law to choose between the baseline periods and decides to choose a baseline period with lower historical activity levels?

4. Is Commission Decision (EU) 2017/126 of 24 January 2017 amending Decision 2013/448/EU as regards the establishment of a uniform cross-sectoral factor in accordance with Article 10a of Directive 2003/87/EC of the European Parliament and of the Council ([2]) to be interpreted as meaning that the cross-sectoral correction factor for allocations made before 1 March 2017 is to be applied to the years 2013-2020 in the form in which it appears in the original version of Article 4 of, and Annex II to, Decision 2013/448/EU, and, in the case of additional allocations of emission entitlements granted by judicial decision after 28 February 2017, to the full quantity of additional allowance for the years 2013 to 2020 or only to the additional allowance for the years 2018 to 2020?

([1]) OJ 2011 L 130, p. 1.
([2]) OJ 2017 L 19, p. 93.

Request for a preliminary ruling from the Fővárosi Közigazgatási és Munkaügyi Bíróság (Hungary) lodged on 6 March 2019 — TN v Bevándorlási és Menekültügyi Hivatal

(Case C-210/19)

(2019/C 182/26)

Language of the case: Hungarian

Referring court

Fővárosi Közigazgatási és Munkaügyi Bíróság

Parties to the main proceedings

Applicant: TN

Defendant: Bevándorlási és Menekültügyi Hivatal

Questions referred

1. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/3[2]/EU ([1]) of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that it is possible for effective judicial protection to be guaranteed in a Member State even if its courts cannot amend decisions given in asylum procedures but may only annul them and order that a new procedure be conducted?

2. Can Article 47 of the Charter of Fundamental Rights and Article 31 of Directive 2013/3[2]/EU of the European Parliament and of the Council (known as the 'Procedures Directive') be interpreted, again in the light of Articles 6 and 13 of the European Convention on Human Rights, as meaning that legislation of a Member State which lays down a single mandatory time limit of 60 days in total for judicial proceedings in asylum matters, irrespective of any individual circumstances and without regard to the particular features of the case or any potential difficulties in relation to evidence, is compatible with those provisions?

([1]) Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ 2013 L 180, p. 60).

Request for a preliminary ruling from the Cour de cassation (France) lodged on 12 March 2019 — XR v Coseil de l'ordre des avocats au barreau de Paris, Bâtonnier de l'ordre des avocats au barreau de Paris, Procureur général près la cour d'appel de Paris

(Case C-218/19)

(2019/C 182/27)

Language of the case: French

Referring court

Cour de cassation

Parties to the main proceedings

Applicant: XR

Defendants: Conseil de l'ordre des avocats au barreau de Paris, Bâtonnier de l'ordre des avocats au barreau de Paris, Procureur général près la cour d'appel de Paris

Questions referred

1. Does the principle that the Treaty establishing the European Economic Community, now, after amendment, the Treaty on the Functioning of the European Union, has created its own legal system, which is integrated into the legal systems of the Member States and which their courts are bound to apply, preclude national legislation which makes the grant of an exemption from the training and diploma requirements laid down, in principle, for entry to the profession of lawyer, dependent on the requirement of sufficient knowledge, on the part of the person requesting exemption, of national law of French origin, so that similar knowledge of the law of the European Union alone is not taken into account?

2. Do Articles 45 and 49 of the Treaty on the Functioning of the European Union preclude national legislation which restricts an exemption from the training and diploma requirements laid down, in principle, for entry to the profession of lawyer, to certain members of the civil service of the same Member State who have performed legal work in that capacity, in France, in an administration or a public service or an international organisation, and which excludes from the scope of that exemption members or former members of the European civil service who have performed legal work in that capacity, in one or more fields of the law of the European Union, within the European Commission?

Request for a preliminary ruling from the Augstākā tiesa (Senāts) (Latvia) lodged on 20 March 2019 — A v Veselības ministrija

(Case C-243/19)

(2019/C 182/28)

Language of the case: Latvian

Referring court

Augstākā tiesa (Senāts)

Parties to the main proceedings

Applicant: A

Defendant: Veselības ministrija

Questions referred

1. Must Article 20(2) of Regulation (EC) No 883/2004 ([1]) of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, in conjunction with Article 21(1) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a Member State may refuse to grant the authorisation referred to in Article 20(1) of that regulation where hospital care, the medical effectiveness of which is not contested, is available in the person's Member State of residence, even though the method of treatment used is contrary to that person's religious beliefs?

2. Must Article 56 of the Treaty on the Functioning of the European Union and Article 8(5) of Directive 2011/24/EU ([2]) of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, in conjunction with Article 21(1) of the Charter of Fundamental Rights of the European Union, be interpreted as meaning that a Member State may refuse to grant the authorisation referred to in Article 8(1) of that directive where hospital care, the medical effectiveness of which is not contested, is available in the person's Member State of affiliation, even though the method of treatment used is contrary to that person's religious beliefs?

([1]) OJ 2004 L 166, p. 1.

([2]) OJ 2011 L 88, p. 45.

Request for a preliminary ruling from the Handelsgericht Wien (Austria) lodged on 21 March 2019 — GB v Decker KFZ-Handels u. -Reparatur GmbH, Volkswagen AG

(Case C-244/19)

(2019/C 182/29)

Language of the case: German

Referring court

Handelsgericht Wien

Parties to the main proceedings

Applicant: GB

Defendants: Decker KFZ-Handels u. -Reparatur GmbH, Volkswagen AG

Questions referred

1. Must Article 5(1) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information ([1]) be interpreted as meaning that the equipment of a vehicle, within the meaning of Article 1(1) of Regulation No 715/2007, is inadmissible if the exhaust gas recirculation valve (i.e. a component that is likely to affect emissions performance) is designed in such a way that the exhaust gas recirculation rate (i.e. the portion of the exhaust gas being recirculated) is regulated in such a way that the valve ensures a low-emission mode only between 15 and 33 degrees Celsius and only below an altitude of 1,000 m, and, outside this temperature window, per 10 degrees Celsius, and above an altitude of 1,000 m, per 250 metres of altitude, the rate decreases in a linear way down to zero, meaning that NOx emissions increase beyond the limits of Regulation No 715/2007?

2. Is it relevant to the assessment of Question 1 whether the equipment referred to in Question 1 is necessary to protect the engine against damage?

3. Furthermore, is it relevant to the assessment of Question 2 whether the part of the engine which is to be protected against damage is the exhaust gas recirculation valve?

4. Is it relevant to the assessment of Question 1 whether the equipment of the vehicle referred to in Question 1 was already installed when the vehicle was produced or whether the regulation of the exhaust gas recirculation valve described in Question 1 is to be installed in the vehicle by way of a repair within the meaning of Article 3(2) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees? ([2])

5. Must Article 3(6) of Directive 1999/44/EC of the European Parliament and of the Council of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees be interpreted as meaning that, when a contract for the purchase of a vehicle has been concluded under which a vehicle is to be supplied which must comply with statutory (EU-law) provisions and such vehicle has been installed with a 'switch logic' (i.e. is regulated in such a way that when the vehicle is started it is in mode 1, and if the software detects a test situation — i.e. the operation of the vehicle in the framework of the New European Drive Cycle (NEDC) — the vehicle remains in mode 1 (NEDC), but if the software detects the movement of the vehicle outside the tolerance levels of the NEDC (deviations from the speed profile of +/- 2 km/h or +/- 1s), the vehicle switches to mode 0 (drive mode), in which the exhaust gas recirculation valve is regulated in such a way that the limits of Regulation No 715/2007 can no longer be met, whereby this method of regulation occurs so promptly that as a result the vehicle is essentially operated only in mode 0), this does not constitute a minor breach of contract?

([1]) OJ 2007 L 171, p. 1.

([2]) OJ 1999 L 171, p. 12.

Request for a preliminary ruling from the Conseil d'État (Belgium) lodged on 25 March 2019 — B. O. L. v État belge

(Case C-250/19)

(2019/C 182/30)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Applicant: B. O. L.

Defendant: État belge

Questions referred

1. In order to guarantee the effectiveness of EU law and not make it impossible to enjoy the right to family reunification which, according to the applicant, is conferred on her by Article 4 of Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification ([1]), must that provision be interpreted as meaning that the sponsor's child is able to enjoy the right to family reunification where he becomes an adult during the court proceedings brought against the decision which refuses to grant him that right and was taken when he was still a minor?'

2. Must Article 47 of the Charter of Fundamental Rights of the European Union and Article 18 of Directive 2003/86/EC be interpreted as precluding an action for annulment, brought against the refusal to grant a right to family reunification to a minor child, being held to be inadmissible on the ground that the child became an adult during the court proceedings, since he is deprived of the opportunity for a judgment to be given in his action against that decision and his right to an effective remedy is infringed?

([1]) OJ 2003 L 251, p. 12.

Appeal brought on 25 March 2019 by Comprojecto-Projetos e Construções, Lda and Others against the order of the General Court (Third Chamber) delivered on 14 February 2019 in Case T-768/17 by Comprojecto Pr jetos e Construções, Lda and Others v European Central Bank (ECB)

(Case C-251/19 P)

(2019/C 182/31)

Language of the case: Portuguese

Parties

Appellants: Comprojecto-Projetos e Construções, Lda, Paulo Eduardo Matos Gomes de Azevedo, Julião Maria Gomes de Azevedo, Isabel Maria Gomes de Azevedo (represented by: M. Ribeiro, advogado)

Other party to the proceedings: European Central Bank

Form of order sought

The appellants submit that the Court of Justice should:

— Declare the appeal admissible, and refer the case back to the General Court for it to give judgment on the substance;

— Pursuant to Article 61 of the Statute of the Court of Justice, annul the decision and refer the case back to the General Court, requiring that costs be duly assessed, in accordance with Article 138 of the Rules of Procedure of the General Court.

Appeal brought on 31 March 2019 by Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) against the judgment of the General Court (Fourth Chamber) delivered on 22 January 2019 in Case T-166/17, EKETA v European Commission

(Case C-273/19 P)

(2019/C 182/32)

Language of the case: Greek

Parties

Appellant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (represented by: V. Christianos and K. Karagounis, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice of the European Union should:

1. Set aside the judgment of the General Court of 22 January 2019 in Case T-166/17 ([1]), to the extent of points 2 and 3 of the operative part and the paragraphs of that judgment relating thereto;

2. Refer the case back to the General Court for a further ruling;

3. Order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant does not challenge point 1 of the operative part of the judgment under appeal, and the related paragraphs 142-143, 145, 171, 173, 187-189 and 191-193 of the judgment under appeal are also not challenged.

The appellant claims that points 2 and 3 of the operative part of the judgment under appeal and the paragraphs relating to them should be set aside on the following grounds:

— *First ground of appeal*: The General Court failed to give judgment in accordance with the law and did not assess all the evidence produced by EKETA. The General Court also distorted the facts, as they emerged from that evidence, erred in law as to the allocation of the burden of proof and was in breach of the obligation to state reasons for its decision (paragraph 5 et seq.).

— *Second ground of appeal*: The General Court erred in law, in that it misinterpreted the issue of whether there was a risk of conflict of interest (paragraph 78 et seq.).

— *Third ground of appeal*: The General Court erred in law, in that it misinterpreted in this case the obligation of the Commission to carry out its audit in accordance with the International Standards on Auditing (paragraph 94 et seq.).

— *Fourth ground of appeal*: The General Court erred in law in its interpretation of the principle of proportionality, which it disregarded (paragraph 103 et seq.).

([1]) ECLI:EU:T:2019:26.

Appeal brought on 31 March 2019 by Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) against the judgment of the General Court (Fourth Chamber) delivered on 22 January 2019 in Case T-198/17, EKETA v European Commission

(Case C-274/19 P)

(2019/C 182/33)

Language of the case: Greek

Parties

Appellant: Ethniko Kentro Erevnas kai Technologikis Anaptyxis (EKETA) (represented by: V. Christianos and K. Karagounis, lawyers)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court of Justice of the European Union should:

1. Set aside the judgment of the General Court of 22 January 2019 in Case T-198/17 ([1]),

2. Refer the case back to the General Court for a further ruling;

3. Order the Commission to pay the costs.

Grounds of appeal and main arguments

The appellant claims that the judgment under appeal should be set aside on the following grounds:

— *First ground of appeal*: The General Court failed to give judgment in accordance with the law and did not assess all the arguments and evidence produced by EKETA. The General Court also distorted the facts, as they emerged from that evidence, erred in law as to the allocation of the burden of proof and was in breach of the obligation to state reasons for its decision.

— *Second ground of appeal*: The General Court erred in law, in that it misinterpreted the issue of whether there was a risk of conflict of interest.

— *Third ground of appeal*: The General Court erred in law in its interpretation of the principle of proportionality, which it disregarded.

([1]) ECLI:EU:T:2019:27.

Appeal brought on 2 April 2019 by the European Research Council Executive Agency (ERCEA) against the judgment of the General Court (Eighth Chamber) delivered on 17 January 2019 in Case T-348/16 OP Aristot leio Panepistimio Thessalonikis v ERCEA

(Case C-280/19P)

(2019/C 182/34)

Language of the case: Greek

Parties

Appellant: European Research Council Executive Agency (ERCEA) (represented by: Francesca Sgritta and Miguel Pesquera Alonso, acting as Agents, and by E.Kourakis, lawyer)

Other party to the proceedings: Aristoteleio Panepistimio Thessalonikis ('the University')

Form of order sought

The appellant claims that the Court should:

— Uphold the present appeal as well-founded and set aside the judgment under appeal in so far as it determined that (1) the amount of EUR 184 157 relating to personnel costs constitute eligible costs and (2) the indirect costs relating to such personnel costs, amounting to EUR 36 831.40, are eligible costs;

— Re-examine the substance of Case T-348/16 OP ([1]) and dismiss the action brought by the University which gave rise to the judgment in Case T-348/16, in relation to its claim for the amount of EUR 184 157 together with EUR 36 831.40 and

— Order the University to bear its own costs and to pay those of ERCEA in relation to these proceedings, and also in relation to the proceedings before the General Court.

Grounds of appeal and main arguments

In support of this appeal requesting that the judgment of the General Court be set aside, ERCEA relies on four main grounds of appeal:

1. The first ground of appeal is that the General Court erred as followed:

   i. the General Court infringed the public interest rules of EU law and in particular the rules which relate to the 7th research framework programme, the legislation which governs that programme (for example Regulation (EC) No 1906/2006) and the Financial Regulation ('the Rules').

   ii. the General Court infringed the rules of interpretation, adopting a clearly erroneous and inadmissible interpretation of Grant Agreement No 211166 ('the Agreement'), which is also incompatible with the Rules, and in that way acted unlawfully.

   iii. in the alternative, the General Court distorted the clear sense of the relevant provisions of the Agreement and consequently distorted the evidence produced before it.

   iv. the General Court failed to explain (1) why supervision is not required in the case of teleworking, or (2) why all forms of teleworking automatically satisfy the requirement of supervision, without the necessity of any additional measures (if we assume that it was accepted that supervision is equally required for teleworking).

2. The second ground of appeal is that the General Court — if it correctly defined the legal conditions governing eligibility of the claim — accepted that the claim at issue was lawful on the basis that only one of the conditions (namely, the Condition on Actual Hours of Work) is satisfied for the reason (in its judgment) that ERCEA did not dispute it. In that way the General Court erred as follows:

   i. the General Court infringed the Rules.

   ii. the General Court also infringed the rules of the law that must be applied to contracts.

iii. on the assumption that the General Court did not neglect to assess the other conditions (and that its approach to the subject was deliberate), the General Court also was in breach of the duty to state sufficient reasons in judgments.

iv. In any event — and on the view that the General Court did not neglect to assess the other conditions and in fact implicitly examined them — the General Court infringed the rules on the burden of proof.

3. The third ground of appeal is that the General Court considered that the employment contract between the University and researchers permitted teleworking and in that way committed a host of errors:

i. the General Court infringed the rules of interpretation of agreements, adopting a clearly erroneous and inadmissible interpretation of the project agreements.

ii. the General Court distorted the relevant evidence.

iii. the General Court delivered a judgment which contained insufficient and contradictory reasoning in connection with the substantive subject matter of the case.

4. The fourth ground of appeal is that the General Court erred for the following reasons:

i. the General Court failed to examine the normal practices of the University in connection with teleworking and used the subject matter of its assessment (namely, the employment contract under consideration) as the point of reference for its assessment. In that way the General Court failed to state sufficient reasons, given that the statement of reasons was manifestly unfounded.

ii. In the alternative, the General Court the rules in relation to proof and the legal sufficiency of statements of reasons for judgments, in that it failed to carry out an overall examination of what was the University's normal practice in connection with the teleworking of its employees and failed to provide any details on that subject.

([1]) ECLI:EU:T:2019:14.

GENERAL COURT

Judgment of the General Court of 4 April 2019 — Rodriguez Prieto v Commission

(Affaire T-61/18) ([1])

(Civil Service — Officials — 'Eurostat' case — National criminal proceedings — No need to adjudicate — Request for assistance — Whistle-blower — Presumption of innocence — Action for damages and annulment)

(2019/C 182/35)

Language of the case: French

Parties

Applicant: Amador Rodriguez Prieto (Steinsel, Luxembourg) (represented by: S. Orlandi, T. Martin and R. Garcia-Valdecasas y Fernandez, lawyers)

Defendant: European Commission (represented by: B. Mongin and R. Striani, acting as Agents)

Re:

Application based on Article 270 TFEU seeking, primarily, compensation for the material and non-material damage which the applicant alleges to have suffered and, in the alternative, annulment of the decision of the Commission of 28 March 2017 rejecting the applicant's request for assistance.

Operative part of the judgment

The Court:

1) Dismisses the claims for damages;

2) Annuls the decision of the European Commission of 28 March 2017 rejecting Mr Amador Rodriguez Prieto's request for assistance;

3) Orders the Commission to bear its own costs and to pay those incurred by Mr Rodriguez Prieto.

([1]) OJ C 134, 16.4.2018.

Judgment of the General Court of 4 April 2019 — ABB AB v EUIPO (FLEXLOADER)

(Case T-373/18) ([1])

(European Union trade mark — Application for EU word mark FLEXLOADER — Absolute grounds for refusal — Lack of descriptive character — Distinctive character — Article 7(1)(b) and (c) of Regulation (EU) 2017/1001 — Neologism — Insufficiently direct and specific connection with certain goods and services covered by the mark applied for)

(2019/C 182/36)

Language of the case: German

Parties

Applicant: ABB AB (Västerås, Sweden) (represented by: M. Hartmann and S. Fröhlich, lawyers)

Defendant: European Union Intellectual Property Office (represented by: D. Hanf and W. Schramek, acting as Agents)

Re:

Action brought against the decision of the First Board of Appeal of EUIPO of 29 March 2018 (Case R 93/2018-1), concerning an application for registration of the word sign FLEXLOADER as an EU trade mark.

Operative part of the judgment

The Court:

1. *Annuls the decision of the First Board of Appeal of EUIPO of 29 March 2018 (Case R 93/2018-1) in so far as it refused registration of the word sign FLEXLOADER for:*

   — *the 'mechanical tools for the application of humectant, binders, oilers, lubricants or dyes', within Class 7 of the Nice Agreement concerning the International Classification of Goods and Services for the purposes of the Registration of Marks of 15 June 1957; and*

   — *the 'electronic data entry and data processing devices, microprocessors, electrical input and output unit, compact discs, floppy disks, magnetic tapes and semiconductors for the storage of technical data', within Class 9 of the Nice Arrangement.*

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

3. *Orders ABB AB and EUIPO to each bear their own costs.*

([1]) OJ C 268, 30.7.2018.

Action brought on 22 February 2019 — Hemp Foods Australia v EUIPO — Cabrejos (Sativa)

(Case T-128/19)

(2019/C 182/37)

Language of the case: English

Parties

Applicant: Hemp Foods Australia Pty Ltd (Sydney, Australia) (represented by: M. Holah and P. Brownlow, Solicitors)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: César Raúl Dávila Cabrejos (Lima, Peru)

Details of the proceedings before EUIPO

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

Trade mark at issue: International registration designating the European Union in respect of the mark Sativa — International registration designating the European Union No 1 259 974

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of EUIPO of 16 November 2018 in Case R 1041/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order that the costs of the proceedings be borne by the defendant.

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 22 March 2019 — Cognac Ferrand v EUIPO (Shape of braiding on a bottle)

(Case T-172/19)

(2019/C 182/38)

Language of the case: French

Parties

Applicant: Cognac Ferrand (Paris, France) (represented by: D. Régnier, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Trade mark at issue: Application for a three-dimensional EU trade mark (Shape of braiding on a bottle) — Application for registration No 17 387 564

Contested decision: Decision of the Second Board of Appeal of EUIPO of 7 January 2019 in Case R 1640/2018-2

Form of order sought

The applicant claims that the Court should:

— annul the contested decision.

Plea in law

— Infringement of Article 7(1)(b) of Regulation (EU) No 2017/1001 of the European Parliament and of the Council.

Action brought on 20 March 2019 — Kalai v Council

(Case T-178/19)

(2019/C 182/39)

Language of the case: French

Parties

Applicant: Nader Kalai (Halifax, Canada) (represented by: G. Karouni, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

— Annul, in so far as those acts concern the applicant:

  — Council Implementing Decision (CFSP) 2019/87 of 21 January 2019 implementing Decision 2013/255/CFSP concerning restrictive measures against Syria;

  — 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;

— Order the Council to pay EUR 2000 000.00 in damages to compensate all forms of loss suffered;

— Order the Council to bear its own costs and to pay those incurred by the applicant, of which supporting evidence can be shown during the proceedings under Article 134 of the Rules of Procedure of the General Court, according to which the unsuccessful party is to be ordered to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging breach of the rights of defence and to a fair trial. In that regard, the applicant submits, based on Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter') and Articles 6 and 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as well as the Court's case-law, that he should have been heard before the Council adopted the restrictive measures against him and that, accordingly, the applicant's rights of defence were not observed.

2. Second plea in law, alleging breach of the obligation to state reasons flowing from the second paragraph of Article 296 TFEU. The applicant complains that the Council merely set out vague and general considerations and failed to state specific and concrete reasons for its view, in the exercise of its discretionary assessment, that the applicant must be subjected to the restrictive measures at issue. Thus no specific and objective factor has been raised against the applicant that could justify the measures at issue.

3. Third plea in law, alleging a manifest error of assessment, in that the Council took as the basis for its reasoning in support of the restrictive measure elements that clearly lack any basis in fact. Therefore, the facts relied on are without any serious foundation.

4. Fourth plea in law, alleging breach of the principle of proportionality in the infringement of fundamental rights. The applicant is of the view that the disputed measure should be invalidated since it is disproportionate in the light of the objective stated and it constitutes excessive interference in the freedom to conduct business and the right to property, enshrined, respectively, in Articles 16 and 17 of the Charter. The disproportion lies in the fact that the measure covers all influential economic activity without any other criterion.

5. Fifth plea in law, alleging breach of the right to property. The applicant claims, based on Article 17 and 52 of the Charter, that a freezing measure undeniably entails a restriction of the exercise of the right to property and that, in the present case, the freezing of the funds stemming from the applicant's activities necessarily constitutes a disproportionate interference in relation to the objective pursued by the Council.

Action brought on 29 March 2019 — Jalkh v Parliament

(Case T-183/19)

(2019/C 182/40)

Language of the case: French

Parties

Applicant: Jean-François Jalkh (Gretz-Armainvilliers, France) (represented by: F. Wagner, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the European Parliament's decision of 31 January 2019 amending that institution's Rules of Procedure;

— order the European Parliament to pay all the costs of the proceedings.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the Charter of Fundamental Rights of the European Union on the ground that the amendment at issue discriminates on the basis of language, which constitutes a failure to observe the principle of linguistic diversity and discourages the French member of the European Parliament from using his mother tongue.

2. Second plea in law, alleging infringement of Article 14 of the Convention for the Protection of Human Rights and Fundamental Freedoms as the European Parliament's new Rules of Procedure discriminate against the applicant, who is a French speaker.

3. Third plea in law, alleging infringement of the Treaty on European Union. In this regard, the applicant claims that, by discriminating against the French language, the European Parliament's new Rules of Procedure undermine cultural and linguistic diversity within that institution.

4. Fourth plea in law, alleging infringement of Article 18 of the Treaty on the Functioning of the European Union which guarantees the observance of the principle of multilingualism and, therefore, the use of the French language.

5. Fifth plea in law, alleging infringement of Council Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (OJ, English Special Edition 1952-1958, p. 59).

Action brought on 4 April 2019 — Knaus Tabbert v EUIPO — Carado (CaraTour)

(Case T-202/19)

(2019/C 182/41)

Language in which the application was lodged: German

Parties

Applicant: Knaus Tabbert GmbH (Jandelsbrunn, Germany) (represented by: N. Maenz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carado GmbH (Leutkirch im Allgäu, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark CaraTour — Application for registration No 15 366 313

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 January 2019 in Case R 506/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject Carado GmbH's opposition of 27 July 2016 regarding EU trade mark No 4 935 334 and German trade mark No 30 611 776 (Case B 2 742 784) in its entirety;

— 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 4 April 2019 — Knaus Tabbert v EUIPO — Carado (CaraTwo)

(Case T-203/19)

(2019/C 182/42)

Language in which the application was lodged: German

Parties

Applicant: Knaus Tabbert GmbH (Jandelsbrunn, Germany) (represented by: N. Maenz, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Carado GmbH (Leutkirch im Allgäu, Germany)

Details of the proceedings before EUIPO

Applicant for the trade mark at issue: Applicant

Trade mark at issue: EU word mark CaraTwo — Application for registration No 15 170 145

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 14 January 2019 in Case R 851/2018-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— reject Carado GmbH's opposition of 27 July 2016 regarding EU trade mark No 4 935 334 and German trade mark No 30 611 776 (Case B 2 742 768) in its entirety;

— 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 5 April 2019 — Armani v EUIPO — Invicta Watch Company of America (GLYCINE)

(Case T-209/19)

(2019/C 182/43)

Language of the case: English

Parties

Applicant: Giorgio Armani SpA (Milan, Italy) (represented by: J. Rether and M. Kinkeldey, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Invicta Watch Company of America, Inc. (Hollywood, Florida, United States)

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Application for European Union figurative mark in colours black and white — Application for registration No 15 910 301

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 4 February 2019 in Case R 578/2018-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

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

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 8 April 2019 — Apple v EUIPO (Styluses)

(Case T-212/19)

(2019/C 182/44)

Language of the case: English

Parties

Applicant: Apple Inc. (Cupertino, California, United States) (represented by: H. Hartwig and A. von Mühlendahl, lawyers)

Defendant: European Union Intellectual Property Office (EUIPO)

Details of the proceedings before EUIPO

Design: Application for registration No 3012707 -0004

Contested decision: Decision of the Third Board of Appeal of EUIPO of 7 January 2019 in Case R 2533/2017-3

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order EUIPO to pay the costs of the proceedings, including those incurred by the applicant before the Board of Appeal.

Pleas in law

— Infringement of Article 11(2) of Commission Regulation (EC) No 2245/2002 in conjunction with Article 5 of Council Regulation (EC) No 6/2002;

— Infringement of Article 12(2) of Commission Regulation (EC) No 2245/2002 in conjunction with Article 5 of Council Regulation (EC) No 6/2002.

Action brought on 8 April 2019 — Fleximed v EUIPO — docPrice (Fleximed)

(Case T-214/19)

(2019/C 182/45)

Language in which the application was lodged: German

Parties

Applicant: Fleximed AG (Triesen, Liechtenstein) (represented by: M. Gail, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: docPrice GmbH (Koblenz, Germany)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark Fleximed — EU trade mark No 12 025 771

Procedure before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fourth Board of Appeal of EUIPO of 6 February 2019 in Case R 1121/2018-4

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.

ISSN 1977-091X (electronic edition)
ISSN 1725-2423 (paper edition)

Publications Office of the European Union
L-2985 Luxembourg
LUXEMBOURG

EN