

Action brought on 15 February 2019 — European Court of Auditors v Karel Pinxten**(Case C-130/19)**

(2019/C 148/22)

*Language of the case: French***Parties***Applicant:* European Court of Auditors (represented by: C. Lesauvage, E. von Bardeleben, J. Vermer, acting as Agents)*Defendant:* Karel Pinxten**Form of order sought**

- Declare that Mr Pinxten no longer meets the obligations arising from his office under Articles 285 and 286 TFEU and the rules adopted in application thereof;
- Impose, consequently, the penalty laid down in Article 286(6) TFEU, the Court of Auditors leaving it to the discretion of the Court to determine the scope;
- Order Mr Pinxten to pay the costs.

Pleas in law and main arguments

The Court of Auditors complains that Mr Pinxten:

- firstly, made improper use of the resources of the Court of Auditors in order to finance activities with no connection or incompatible with his duties as a Member;
- secondly, made improper and unlawful use of tax privileges;
- thirdly, made false insurance claims in the context of alleged accidents involving the service vehicle made available to him;
- fourthly, exercised managed activities for a commercial company and intense political activity within a political party although he was in the service of the Court of Auditors;
- fifthly, created a situation of conflict of interests by making a service offer to an official of an audited entity.

Appeal brought on 20 February 2019 by Lupin Ltd against the judgment of the General Court (Ninth Chamber) delivered on 12 December 2018 in Case T-680/14: Lupin v Commission**(Case C-144/19 P)**

(2019/C 148/23)

*Language of the case: English***Parties***Appellant:* Lupin Ltd (represented by: S. Smith, A. White, Solicitors, M. Hoskins QC, V. Wakefield, Barrister)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- quash the General Court finding in relation to the difference in treatment between Lupin and Krka and,
- pursuant to Article 61 of the Statute, give final judgment in the matter quashing or reducing the fine imposed by the Commission.

Pleas in law and main arguments

1. The first plea in law is that the General Court erred in law by holding that the patent settlement agreement concluded by Lupin and Servier on 30 January 2007 was a restriction by object under Article 101(1) TFEU. In particular:
 - a. The General Court misdirected itself as to the applicable legal test for a finding of infringement by object, particularly in light of the legal principles upheld in Case C-67/13 P, *Cartes Bancaire*.
 - b. The General Court failed to recognise that the effect on competition of non-compete and non-challenge clauses in settlement agreements is the same regardless of the existence of any inducement.
 - c. The General Court failed to analyse or explain the distinction between justified and unjustified reverse payments, contrary to the principle of legal certainty.
 - d. The General Court erred in finding that the existence of an ‘inducement’ to a generic company justifies a finding of a restriction by object. Nor can the receipt of a ‘benefit’ by the generic company justify such a finding.
 - e. The General Court erred in law by holding that the ambiguous drafting of the restrictions under the agreement should be construed as extending to products beyond the scope of the patent being litigated by the parties.

No restriction by effect

2. The General Court held that Lupin’s challenge to the Commission’s finding of a restriction by effect was ineffective, since it had upheld the Commission’s finding of restriction by object. Lupin’s second plea in law is that, if the Court overturns that finding on object, the Court should give final judgment on Lupin’s appeal by quashing the Commission’s finding on restriction by effect. In particular:
 - a. The Commission erred in law in its reliance on reverse payment and/or significant inducement.
 - b. The Commission should have analysed the question of restriction by effect by reference to the ancillary restraints doctrine and/or by reference to the principles recognised in Case C-309/99, *Wouters*, and/or Article 102 TFEU.
 - c. The Commission’s assessment of Servier’s market position for the purposes of Article 101(1) TFEU directly transposed its findings in respect of dominance under Article 102 TFEU, which have been annulled (Case T-691/14, *Servier v Commission*).

Penalty

3. The third plea in law is that the General Court erred, in respect of the fine, in its assessment of the novel nature of the alleged infringement.
4. The fourth plea in law is that the General Court erred in respect of the obligation to have regard to both the gravity and duration of the alleged infringement when setting a fine.
5. The fifth plea in law is that the General Court erred in failing to take into account the value of the patent applications transferred from Servier to Lupin when setting the fine.
6. The sixth plea in law, which is contingent upon the Commission's successful appeal of the General Court's judgment in Case T-684/14, Krka, is that the General Court erred by holding that the Commission's treatment of Lupin compared to Krka did not breach the principle of equal treatment.

Appeal brought on 20 February 2019 by Mohamed Hosni Elsayed Mubarak against the judgment of the General Court (Fifth Chamber) delivered on 12 December 2018 in Case T-358/17: Mubarak v Council

(Case C-145/19 P)

(2019/C 148/24)

Language of the case: English

Parties

Appellant: Mohamed Hosni Elsayed Mubarak (represented by: D. Anderson QC, B. Kennelly QC, J. Pobjoy, Barrister, G. Martin, C. Enderby Smith, F. Holmey, Solicitors)

Other party to the proceedings: Council of the European Union

Form of order sought

The appellant claims that the Court should:

1. set aside the decision under appeal;
2. itself give final judgment in this case, annulling the contested acts in so far as they concern the appellant;
3. in the alternative, refer the case back to the General Court for judgment, in line with the legal assessment of the Court of Justice; and
4. order the Council to pay the appellant's costs of the proceedings before the Court of Justice and the General Court.

Pleas in law and main arguments

First plea in law, alleging that the General Court erred in finding that the Council was not required to verify that the Egyptian authorities had respected the appellant's fundamental EU rights.