

**Pleas in law and main arguments**

In support of the appeal, the appellant relies on three pleas in law:

1. First plea in law, alleging breach of Article 85 of the Staff Regulations and the principle of legal certainty, in that the Civil Service Tribunal, in line with relevant case-law, should have come to the conclusion that it cannot be reasonably argued that one or the other of the two possible interpretations of Article 4 (1) (b) of Annex VII to the Staff Regulations, namely whether the reference period of 10 years ends with the initial entry into service or with the entering into service at the entity of secondment, is so manifestly unfounded, that article 85 applies;
2. Second plea in law, alleging breach of the principle of non-discrimination and of Article 19 TUE, in that, due to the application of diverging and incompatible national and EU law on unjust enrichment, the appellant is discriminated against compared to a situation in which only the national legal order applies, as he is not allowed to invoke against the Commission the fact that enrichment does not exist anymore;
3. Third plea in law, invoking non-contractual liability of the EU, in that by deciding that the overpayment must be considered unlawful and imposing on the applicant to reimburse the overpayment to the Commission, damage to the detriment of the appellant has occurred.

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**Action brought on 5 December 2014 — DenizBank v Council****(Case T-798/14)**

(2015/C 089/35)

*Language of the case: English***Parties**

*Applicant:* DenizBank A.Ş. (Esenetepe, Turkey) (represented by: M. Lester and O. Jones, Barristers, R. Mattick and S. Utku, Solicitors)

*Defendant:* Council of the European Union

**Form of order sought**

The applicant claims that the Court should:

- annul Council Decision 2014/659/CFSP of 8 September 2014<sup>(1)</sup> and Council Regulation (EU) No 960/2014 of 8 September 2014<sup>(2)</sup> (together the contested measures) insofar as they apply to the applicant;
- declare the inapplicability pursuant to Article 277 TFEU as regards Article 1 of the 8 September Decision, and Article 1 (5) of the 8 September Regulation; and
- order the Council to pay the costs.

**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 has breached its duty to give reasons for imposing the contested measures on the applicant. Further, the applicant contends that the Council has given it no reasons at all for imposing the contested measures on it, nor even informed it of its inclusion.

2. Second plea in law, alleging that the Council has failed to safeguard the applicant's rights of defence, including its right to a fair hearing and to effective judicial review. The applicant submits that the Council has given the applicant no reasons or evidence for imposing the contested measures on it, no opportunity for it to comment on the case against it, and has thereby also impeded the Court from 'exercising effective judicial review'.
3. Third plea in law, alleging that insofar as it has imposed the contested measures on the applicant, the Council has breached the Ankara Agreement between Turkey and the EU (and its Additional Protocol) in a number of respects.
4. Fourth plea in law, alleging that the Council has breached the principles of non-discrimination and proportionality, and has imposed an unjustified and disproportionate restriction on the applicant's fundamental rights.

<sup>(1)</sup> Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 271, p. 54).

<sup>(2)</sup> Council Regulation (EU) No 960/2014 of 8 September 2014 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine (OJ L 271, p. 3).

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### Action brought on 18 December 2014 — Zoofachhandel Züpke and Others v Commission

(Case T-817/14)

(2015/C 089/36)

*Language of the case: German*

#### Parties

**Applicants:** Zoofachhandel Züpke GmbH (Wesel, Germany), Zoohaus Bürstadt, Helmut Ofenloch GmbH & Co. KG (Bürstadt, Germany), Zoofachgeschäft — Vogelgroßhandel Import-Export Heinz Marche (Heinsberg, Germany), Rita Bürgel (Uthleben, Germany), Norbert Kass (Altenbeken, Germany) (represented by: C. Correll, lawyer)

**Defendant:** European Commission

#### Form of order sought

The applicants claim that the General Court should:

- order the defendant to repair the damage suffered since 1 January 2010 by the applicants as a result of the adoption of a prohibition on importation of wild birds captured in the EU, a prohibition which applies almost worldwide, included in Regulation (EC) No 318/2007 of 23 March 2007 (OJ 2007 L 84, p. 7) and/or in Implementing Regulation (EU) No 139/2013 of 7 January 2013 (OJ 2013 L 47, p. 1);
- order the Commission to pay the costs.

#### Pleas in law and main arguments

In support of the action, the applicants claim, first, that as a result of the continuation, without a critical approach, of the prohibition on importation in its extremely broad geographical scope, the Commission infringed the freedom to carry out an economic activity and, in part, the right to property enjoyed by the applicants. In the light of scientific knowledge acquired in any event since 2010, that prohibition is not capable of being justified by overriding considerations such as the protection of health.