

2. Dismisses the action brought by Jürgen Frieberger and Benjamin Vallin before the Civil Service Tribunal in Case F-3/15;
3. Orders each party to bear its own costs relating to the appeal proceedings;
4. Orders Mr Frieberger and Mr Vallin to pay the costs of the proceedings before the Civil Service Tribunal, including the costs incurred by the European Commission.

(¹) OJ C 243, 4.7.2016.

Action brought on 15 December 2016 — Ms v Commission

(Case T-314/16)

(2017/C 063/40)

Language of the case: French

Parties

Applicant: Ms (Castries, France) (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— declare the present action admissible and well founded;

and consequently:

— annul the Commission's decision of 2 February 2016 refusing access to the documents and the decision of 19 April 2016 upholding that refusal;

— compensate the non-material damage stemming from the wrongful conduct on the part of the European Commission, assessed on an equitable basis at EUR 20 000;

— order the defendant to pay the costs in their entirety.

Pleas in law and main arguments

In support of the action, the applicant relies on a single plea in law, alleging the infringement of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43), and in particular of Articles 2 and 4 thereof.

According to the applicant, in order to refuse access to the requested documents, the Commission relied on two exceptions in Article 4 of Regulation No 1049/2001, namely, first, the protection of the privacy and the integrity of the individual and, secondly, the protection of court proceedings. However, the Commission has not showed that the disclosure of those documents would have undermined the protection of the privacy and the integrity of the persons who have been referred to in those documents. In addition, the transfer of the personal data contained in those documents is absolutely necessary in order to understand the accusations made against the applicant. In the absence of that possibility, the applicant would not enjoy equality of arms and would not be in a position to prepare sufficiently a defence. The access to the documents, and to the personal data in them, is by contrast necessary, justified and proportionate to the aim of sound administration, the protection of the rights of the defence and the respect for the applicant's privacy. The Commission undermines the applicant's privacy all the more so in so far as it does not process the personal data concerning the applicant fairly.

In the alternative, the applicant states that the exceptions covered by Article 4 preclude the disclosure of the requested document only if there is no public interest justifying disclosure. It submits that fundamental rights, in particular the rights of the defence, are capable of constituting such a public interest.

In its decision rejecting the confirmatory application, the Commission restricted itself to providing a purely general statement of reasons since it does not explain how partial access to the documents in question would jeopardise the interest of the protection of personal data and of the privacy of the individuals referred to in them.

The applicant submits, lastly, that the unlawful acts committed by the Commission likewise constitute unlawful conduct that has caused him actual and certain damage.

Action brought on 15 December 2016 — Nf Nails In Vogue v EUIPO — Nails & Beauty (NAILS FACTORY)

(Case T-886/16)

(2017/C 063/41)

Language in which the application was lodged: Spanish

Parties

Applicant: Nf Nails In Vogue, SL (Arganda del Rey, Spain) (represented by: L. Jáudenes Sánchez, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Nails & Beauty Vertriebs GmbH (Kiel, Germany)

Details of the proceedings before EUIPO

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

Trade mark at issue: European Union figurative mark containing the word elements 'NAILS FACTORY' — Application for registration No 13 528 336

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of EUIPO of 5 October 2016 in Case R 202/2016-1

Form of order sought

The applicant claims that the Court should:

- declare the action admissible;
- annul the contested decision and uphold the Opposition Division's decision;
- order EUIPO to pay the costs, including those incurred in the proceedings before the Board of Appeal.

Plea in law

- Infringement of Article 8(1)(b) of Regulation No 207/2009.
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