

Action brought on 13 May 2008 — Schröder v CPVO — Hansson (Sumost 01)**(Case T-177/08)**

(2008/C 171/85)

*Language in which the application was lodged: German***Parties***Applicant:* Ralf Schröder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt, lawyers)*Defendant:* Community Plant Variety Office*Other party to the proceedings before the Board of Appeal:* Jørn Hansson (Søndersø, Denmark)**Form of order sought**

- Annul the decision of the Board of Appeal of the Community Plant Variety Office of 4 December 2007 (Ref. A 005/2007);
- Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments*Applicant for Community plant variety rights:* Ralf Schröder.*Community plant variety right at issue:* 'Sumost 01' (Variety application No 2001/1758).*Proprietor of the opposing Community plant variety right:* Jørn Hansson.*Opposing Community plant variety right:* 'Lemon Symphony'.*Decision of the Community Plant Variety Office, appealed against before the Board of Appeal:* Rejection of the application for Community plant variety rights.*Decision of the Board of Appeal:* Dismissal of the appeal.

Pleas in law:

- Infringement of Article 59(2) of Regulation (EC) No 1239/95 ⁽¹⁾, in that the applicant was not duly summoned to the oral proceedings;
- Infringement of Article 75 of Regulation (EC) No 2100/94 ⁽²⁾, in that the appealed decision was based on grounds and evidence on which the applicant had no opportunity to present his comments;
- Infringement of Article 81(2) and Article 48 of Regulation No 2100/94 on account of the alleged partiality of an employee of the defendant, whose evidence was relied on in the decision;
- Infringement of Article 60 of Regulation No 1239/95, in that no formal decision was issued concerning hearing the oral evidence of an employee of the defendant;

- Infringement of Article 62 of Regulation No 2100/94 by reason of an insufficient and flawed assessment of the facts as regards distinctiveness;
- Infringement of Article 48 of Regulation No 2100/94 on account of alleged partiality on the part of one of the members of the Board of Appeal.

⁽¹⁾ Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).

⁽²⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

Appeal brought on 15 May 2008 by Giuseppe Tiralongo against the order of the Civil Service Tribunal delivered on 6 March 2008 in Case F-55/07, Tiralongo v Commission**(Case T-180/08 P)**

(2008/C 171/86)

*Language of the case: Italian***Parties***Appellant:* Giuseppe Tiralongo (Ladispoli, Italy) (represented by F. Sciaudone, lawyer, R. Sciaudone, lawyer, and S. Frazzani, lawyer)*Other party to the proceedings:* Commission of the European Communities**Form of order sought by the appellant**

- annul the contested order of 6 March 2008 in Case F-55/07, and refer the case back to the Civil Service Tribunal for it to rule on the substance of the case in the light of the guidance which the Court of First Instance sees fit to provide;
- order the Commission to pay the costs of the present proceedings and those of Case F-55/07.

Pleas in law and main arguments

In support of its forms of order sought, the applicant claims:

- misapplication of the case law relating to the independence of legal remedies. In particular, the court of first instance misapplied the principles of case-law referring to compensation for damage caused by unlawful acts to a case in which, on the other hand, the harm was caused by unlawful conduct;