

**Operative part of the order**

1. *The action is dismissed as inadmissible.*
2. *There is no need to adjudicate on the application for leave to intervene of the French Republic.*
3. *The Association pour la défense de l'épargne et de l'actionnariat des salariés de France Télécom-Orange (ADEAS) shall bear its own costs and pay those incurred by the European Commission.*
4. *The French Republic shall bear its own costs.*

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<sup>(1)</sup> OJ C 79, 16.3.2013.

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**Appeal brought on 21 February 2014 by Alvaro Sesma Merino against the judgment of the Civil Service Tribunal of 11 December 2013 in Case F-125/12, Sesma Merino v OHIM**

**(Case T-127/14 P)**

(2014/C 184/53)

*Language of the case: German*

**Parties**

*Appellant:* Alvaro Sesma Merino (El Campello, Spain) (represented by H. Tettenborn, lawyer)

*Other party to the proceedings:* Office for Harmonisation in the Internal Market (Trade Marks and Designs)

**Form of order sought by the appellant**

The appellant claims that the Court should:

- set aside in its entirety the judgment of the Civil Service Tribunal (Third Chamber) of 11 December 2013 in Case F-125/12 and rule in accordance with the form of order sought by the appellant in those proceedings;
- in the alternative, refer the case back to the Civil Service Tribunal after setting aside the abovementioned judgment;
- annul the appellant's appraisal report for 2011 in the version of 1 February 2012 and the respondent's emails of 14.51 on 2 February 2012 and 15.49 on 2 February 2012, in so far as they contain the objectives set for the appellant by OHIM in respect of the period 1 October 2011 to 30 September 2012;
- order OHIM to pay the appellant damages of an appropriate amount, to be left to the discretion of the Court, for the non-material damage caused to him;
- order OHIM to pay the costs of the entire proceedings — namely, the proceedings before the Civil Service Tribunal and the appeal before the General Court.

**Grounds of appeal and main arguments**

In support of the appeal, the appellant relies on three grounds of appeal.

1. First ground of appeal: infringement of Article 90(2) of the Staff Regulations
  - The appellant submits that, contrary to the view taken in the judgment under appeal, the setting of objectives is indeed an act which directly and individually affects the legal position of the person concerned and is capable of adversely affecting a particular legal position directly.

- In this connection the appellant submits, inter alia, that the Civil Service Tribunal examined only whether the setting of the objectives would give rise to binding legal effects for the official's future appraisal, instead of examining whether the setting of objectives would per se give rise to binding legal effects for the appellant, a question which should, in any event, have been answered in the affirmative. The appellant submits that the Civil Service Tribunal confused the setting of objectives with his appraisal. In addition, it would be contrary to the duty to have regard for the welfare of officials and the principle of proportionality and thus to the principle of the rule of law, if an official could be made subject for a whole year to unreasonable working conditions due to unreasonable objectives without being able to defend himself against this directly.
2. Second ground of appeal: infringement of the fundamental right to effective legal protection under Article 6(1) ECHR and Article 47 of the Charter of Fundamental Rights
- The appellant submits that there is infringement of the fundamental right to effective legal protection due to the lack of a substantive examination. He puts forward that he submitted that other fundamental rights had been infringed and that such an infringement always also constitutes an act with adverse effects under Article 90(2) of the Staff Regulations. The reference to proceedings in respect of the subsequent appraisal infringes the fundamental right to effective legal protection.
3. Third ground of appeal: infringement of the laws of logic
- Here the appellant submits that the categorisation of the setting of objectives as a merely preparatory measure for the appraisal constitutes an infringement of the laws of logic.
  - The same applies to the Tribunal's statement that the setting of an objective may, under certain conditions, also be regarded as an act with adverse effects for the purposes of Article 90(2) of the Staff Regulations. It is precisely the examination of those conditions, however, which constitutes an examination of the merits. The Civil Service Tribunal thus acknowledges the need for a judicial remedy, which it then, however, inconsistently, refuses as inadmissible.

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**Action brought on 7 March 2014 — Calberson GE v Commission**

**(Case T-164/14)**

(2014/C 184/54)

*Language of the case: French*

**Parties**

*Applicant:* Calberson GE (Villeneuve-la-Garenne, France) (represented by: T. Gallois and E. Dereviankine, lawyers)

*Defendant:* European Commission

**Form of order sought**

The applicant claims that the Court should:

- order the European Commission to pay it the following amounts:
  - financial costs generated by the late release of supply securities: EUR 7 691.60 including tax;
  - default interest to run from the due date of the transport invoices to the time of their effective payment: EUR 81 817.25 excluding tax and USD 6 344.17;
  - 'default interest on default interest': 2% per month of late payment of the aforementioned default interest (EUR 81 817.25 excluding tax and USD 6 344.17);
  - balance of one transport invoice: EUR 17 400 including tax;
  - differential of one rate of exchange: EUR 30 580.41 including tax;
- order the European Commission to pay the costs.