

- aside from other considerations, in the case in question, the unacceptable delay in communicating the decision can in no way be imputed to the appellant. On this point, too, the Tribunal failed to carry out an adequate evaluation — even in terms of procedural correctness — of the contentions of the defendant concerning the difficulty of identifying the official's place of residence.
- that, notwithstanding the fact that at the time of bringing the action the appellant had already retired, he had an interest in bringing proceedings to establish the unlawfulness of the transfer in question and he continues to possess such an interest, in that his application for compensation for non-material and professional damage is predicated upon establishing the unlawfulness of the contested measure.

Appeal brought on 29 December 2006 by De Smedt against the judgment of the Civil Service Tribunal delivered on 19 October 2006 in Case F-59/05, De Smedt v Commission

(Case T-415/06 P)

(2007/C 42/75)

Language of the case: French

Parties

Appellant: Elisabeth de Smedt (Wezembeek-Oppem, Belgium) (represented by L. Vogel and R. Kechiche, lawyers)

Other party to the proceedings: Commission of the European Communities

Form of order sought by the appellant

- annulment in full of the judgment under appeal, delivered in 19 October 2006 by the Second Chamber of the Civil Service Tribunal, notified by registered letter of 19 October 2006, by which the action brought by the appellant on 8 July 2005 was dismissed;
- grant to the appellant the forms of order sought in the action brought by her on 8 July 2005;
- order the defendant and the intervener to pay the costs of the action pursuant to Article 87(2) of the Rules of Procedure, including the expenses necessarily incurred for the purposes of the proceedings, and, in particular, the costs of having an address for service, travel and accommodation expenses and lawyers' fees, pursuant to Article 91(b) of the Rules of Procedure.

Pleas in law and main arguments

By judgment of 19 October 2006, the annulment of which is sought by this appeal, the Civil Service Tribunal dismissed the action brought by the appellant seeking, first, annulment of the

decision of the Commission of 21 March 2005 fixing the classification and remuneration of the applicant, who was previously an auxiliary agent recruited as a contractual agent, and, secondly, payment of damages.

In support of her application for the annulment of that judgment, the appellant puts forward two grounds of appeal, the first of which is based on infringement of Article 80(3) of the Conditions of Employment of other servants of the Communities (CEOS) ⁽¹⁾, together with a manifest error of assessment. The appellant argues that, in rejecting the first plea in law under her original application on the ground that the Commission was obliged to follow a timescale laid down in terms of Regulation No 723/2004 ⁽²⁾, for the replacement of the former temporary staff status by the new contractual agent status, the Civil Service Tribunal allowed the Commission to disregard all preliminary procedures relating to the recruitment of contractual agents, in breach of Article 80(3) of the CEOS.

The second ground of appeal is based on infringement of the principle of non-discrimination, a failure to state adequate reasons and a failure to address the appellant's written pleadings in rejecting the second plea in law of her initial application, which was founded on the discriminatory situation in which the appellant was required to work, by comparison with other persons carrying out duties identical to her own, in the same department of the Commission. The appellant objects that the Civil Service Tribunal failed to provide a satisfactory response to her submissions in that regard and did no more than reject the plea, using an abstract form of words.

⁽¹⁾ The Conditions of Employment of Other Servants of the Communities were laid down under Article 3 of Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the CEOS (OJ 1968 L 6, p. 1).

⁽²⁾ Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1).

Action brought on 29 December 2006 — Sumitomo Chemical Agro Europe v Commission

(Case T-416/06)

(2007/C 42/76)

Language of the case: English

Parties

Applicant: Sumitomo Chemical Agro Europe SAS (Saint Didier, France) (represented by: K. Van Maldegem and C. Mereu, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Order the defendant, if necessary by means of an interlocutory order, to correct the material mistake in Annex I, Part A, and replace '0.75 g' with '0.75 Kg';
- order the annulment of the following provisions of Directive 2006/132:
 - Article 3(2): 'by 30 June 2008'
 - Annex I: '30 June 2008'
 - Annex I, Part A: 'on the following crops'
 - cucumbers in greenhouses (closed hydroponic systems),
 - plums (for processing)
 - Annex I, Part B: 'Member States shall request the submission of further studies to address the potential endocrine disrupting properties of procymidone within two years after the adoption of the Test Guidelines on endocrine disruption by the Organisation for Economic Cooperation and Development (OECD). They shall ensure that the notifier at whose request procymidone has been included in this Annex provide such studies to the Commission within two years of the adoption of the above test guidelines.'
- order the defendant to pay all costs and expenses in these proceedings.

Pleas in law and main arguments

Council Directive 91/414 concerning the placing of plant protection products on the market ⁽¹⁾ provides that Member States shall not authorise a plant protection product unless its active substances are listed in Annex I and any conditions laid down therein are fulfilled. The applicant seeks the partial annulment of Commission Directive 2006/132 amending Directive 91/414 to include procymidone as active substance ⁽²⁾ insofar as this directive i) only provides for a limited inclusion of procymidone in Annex I to Directive 91/414, ii) provides for specific conditions on the authorised use and iii) foresees a limited period of 18 months for the validity of the limited inclusion in Annex I.

In support of its application, the applicant submits that the contested directive violates Articles 1(1), 2(1) and 5(1) and (4) of Directive 91/414. Furthermore, the applicant contends that the contested directive is inconsistent with Article 5(5) of Directive 91/414 and that the Commission therefore exceeded the limits of its discretion.

The applicant moreover claims that the contested directive is procedurally flawed as the Commission is obliged to adopt the

measures as they were proposed to the Standing Committee on the Food Chain and Animal Health and the Council without amending them before their final adoption.

Furthermore, the applicant alleges that the contested directive violates the applicant's legitimate expectations, as well as the principles of sound administration, subsidiarity, proportionality, legal certainty, equal treatment and excellence and independence of scientific advice. The applicant also contends that the contested directive is not providing sufficient justification and that the duty to state reasons is therefore infringed.

Finally, the applicant submits that the contested directive encroaches upon its right to conduct business activities and interferes with its right of property.

⁽¹⁾ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ 1991 L 230, p. 1).

⁽²⁾ Commission Directive 2006/132/EC of 11 December 2006 amending Council Directive 91/414/EEC to include procymidone as active substance (OJ 2006 L 349, p. 22).

Action brought on 5 January 2007 — Sanofi-Aventis v OHIM — AstraZeneca (EXANTIN)**(Case T-4/07)**

(2007/C 42/77)

*Language in which the application was lodged: English***Parties**

Applicant: Sanofi-Aventis SA (Paris, France) (represented by: R. Gilbey, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs)

Other party to the proceedings before the Board of Appeal: AstraZeneca AB (Södertälje, Sweden)

Form of order sought

- Annul the decision of the First Board of Appeal dated 10 October 2006, case R 1302/2005-1, and uphold the appellant's contention that there exists a likelihood of confusion between the marks in conflict;
- order the Office for Harmonisation in the Internal Market to bear the costs of the appellant in the present instance.