

Pleas in law and main arguments

By the above appeal, the appellant asks the General Court to set aside the judgment of the Civil Service Tribunal of 15 June 2010 in Case F-35/08 *Pachtitis v Commission* annulling the decisions of the European Personnel Selection Office of 31 May 2007 and 6 December 2007 whereby Dimitrios Pachtitis was excluded from the list of the 110 candidates who obtained the highest marks in the pre-selection tests of the open competition EPSO/AD/77/06, and ordering the Commission to bear its own costs and to pay those of Mr Pachtitis.

In support of its appeal, the Commission relies on the following pleas in law:

- infringement of Articles 1, 5 and 7 of Annex III to the Staff Regulations of Officials of the European Communities;
- infringement of Community law, and in particular Article 2 of Decision 2002/620/EC⁽¹⁾ and Article 1 of Decision 2002/621/EC,⁽²⁾ on the establishment of the European Personnel Selection Office;
- infringement of the obligation to state reasons for decisions.

⁽¹⁾ Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office — Declaration by the Bureau of the European Parliament, OJ 2002 L 197 p. 53

⁽²⁾ Decision 2002/621/EC of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of the European Communities Personnel Selection Office, OJ 2002 L 197 p. 56

Action brought on 3 September 2010 — Bloufin Touna Ellas Naftiki Etaireia e.a. v Commission

(Case T-367/10)

(2010/C 301/58)

Language of the case: English

Parties

Applicants: Bloufin Touna Ellas Naftiki Etaireia (Athens, Greece), Chrisderic (St Cyprien, France), André Sébastien Fortassier (Grau D'Agde, France) (represented by: V. Akritidis and E. Petritsi, lawyers)

Defendant: European Commission

Form of order sought

- annul Commission Regulation (EU) No 498/2010 of 9 June 2010 prohibiting fishing activities for purse seiners flying the flag of France or Greece or registered in France or Greece, fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45° W, and in the Mediterranean Sea⁽¹⁾;
- order that all the costs occasioned by the applicants in the course of the present proceedings be borne by the Commission.

Pleas in law and main arguments

In support of the application, the applicant puts forward three pleas in law.

First, it claims that the contested regulation was adopted in breach of the principles of equal treatment and non-discrimination laid down in Article 18 TFUE that prohibits discrimination on grounds of nationality and in Article 40(2) TFUE that prohibits discrimination between producers or consumers in the agricultural sector as well as in breach of the general principle of European Union law within the meaning of Article 21(2) of the Charter of Fundamental Rights of the European Union.

In this regard, the applicant states that the Commission has discriminated on two grounds. First, it has prohibited further fishing activities of Greece, France and Spain⁽²⁾ prior to the end of the fishing period, whilst, however, the exhaustion of the Greek quota was way lower than that of Spain. Second, whilst the Commission had informed all three EU Member States that the fishing activities would be terminated, it published two different binding termination regulations, one for Greece and France and a second one for Spain, effectively allowing the Spanish fleet to continue fishing until the end of the fishing period. The applicant claims that to its knowledge there was no objective reason justifying such different treatment.

Second, the applicant submits that the Commission violated the general principle of proportionality laid down in Article 5(4) TFUE and Protocol No 2 annexed to the Treaty and recognised in a settled case law as a superior rule of law for the protection of the individual. In the applicant's view, the Commission could have adopted more proportionate measure to ensure the compliance by EU Member States with the regime of Regulation (EC) Nr 1224/2009⁽³⁾ and prohibited fishing of live bluefin tuna when national quotas would have reached a more critical level, close to 100%. It could have also prohibited such activity on the same date for all EU Member States concerned.

Third, the applicant claims that the contested regulation was adopted in breach of the general principle of good and proper administration and/or duty of care as defined by established case law and foreseen in article 41 of the Charter of Fundamental Rights of the European Union.

(¹) OJ 2010 L 142, p. 1

(²) Commission Regulation (EU) No 508/2010 of 14 June 2010 prohibiting fishing activities for purse seiners flying the flag of or registered in Spain, fishing for bluefin tuna in the Atlantic ocean, east of longitude of 45° W, and in the Mediterranean sea (OJ 2010 L 149, p. 7).

(³) Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, OJ 2009 L 343, p. 1

Action brought on 2 September 2010 — Handicare v OHIM — Apple Corps (BEATLE)

(Case T-369/10)

(2010/C 301/59)

Language in which the application was lodged: English

Parties

Applicant: Handicare Holding BV (Helmond, The Netherlands) (represented by: G. van Roeyen, lawyer)

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

Other party to the proceedings before the Board of Appeal: Apple Corps Ltd (London, United Kingdom)

Form of order sought

— Annul the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) of 31 May 2010 in case R 1276/2009-2; and

— Order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

Applicant for the Community trade mark: The applicant

Community trade mark concerned: The figurative mark 'BEATLE', for goods in class 12

Proprietor of the mark or sign cited in the opposition proceedings: The other party to the proceedings before the Board of Appeal

Mark or sign cited: United Kingdom trade mark registration No 1341242 of the figurative marks 'BEATLES' and 'THE BEATLES', for goods in class 9; Spanish trade mark registration No 1737191 of the figurative mark 'BEATLES', for goods in class 9; German trade mark registrations No 1148166 and No 2072741 of the figurative marks 'BEATLES', for goods in class 9; Portuguese trade mark registration No 312175 of the figurative mark 'BEATLES', for goods in class 9; French trade mark registration No 1584857 of the figurative mark 'BEATLES', for goods in class 9; Italian trade mark registration No 839105 of the figurative mark 'BEATLES', for goods in class 9; Community trade mark registration No 219048 of the word mark 'BEATLES', for goods in classes 6, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 34, and 41; Community trade mark registration No 219014 of the figurative mark 'BEATLES', for goods in classes 6, 9, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 34, and 41

Decision of the Opposition Division: Rejected the opposition

Decision of the Board of Appeal: Upheld the appeal and annulled the decision of the Opposition Division

Pleas in law: Infringement of Articles 8(1)(b) and 8(4) of Council Regulation No 207/2009, as the Board of Appeal failed to reject the opposition on these grounds notwithstanding that it established that there is not any real similarity between the concerned products; infringement of Article 8(5) of Council Regulation No 207/2009, as the Board of Appeal erroneously concluded that the conditions for the application of this Article were fulfilled.

Action brought on 3 September 2010 — Bolloré v Commission

(Case T-372/10)

(2010/C 301/60)

Language of the case: French

Parties

Applicant: Bolloré (Ergué-Gabéric, France) (represented by: P. Gassenbach, C. Lemaire and O. de Juvigny, lawyers)

Defendant: European Commission

Form of order sought

— Annul Articles 1 and 2 of Commission Decision C(2010) 4160 final of 23 June 2010 relating to a proceeding under Article 101 TFUE and Article 53 of the EEA Agreement (Case COMP/36.212 — Carbonless paper);