



Reports of Cases

Case T-541/10

Anotati Dioikisi Enoseon Dimosion Ypallilon (ADEDY) and Others v Council of the European Union

(Action for annulment — Decisions addressed to a Member State with a view to remedying a situation of excessive deficit — No direct concern — Inadmissibility)

Summary — Order of the General Court (First Chamber), 27 November 2012

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Criteria — Council decision putting a Member State on notice to take measures to remedy an excessive deficit situation — Action brought by a trade union confederation and by its members — Not directly concerned — Inadmissibility*

(Art. 263, fourth para., TFEU; Council Regulation No 1467/97, Art. 5)

2. *European Union — Judicial review of the legality of the acts of the institutions — Acts requiring national application measures — Natural or legal persons able to resort to a request for a preliminary ruling for an assessment of validity — Obligation on Member States to establish the necessary remedies to ensure effective judicial protection — Opening of an action for annulment before the EU judicature in the absence of remedies before the national courts — Exclusion*

(Arts 19(1), second subpara., TEU, 263 TFEU, 267 TFEU and 277 TFEU)

1. The condition for admissibility, namely the requirement that the decision forming the subject-matter of the proceedings must be of direct concern to a natural or legal person, as laid down in the fourth paragraph of Article 263 EC, requires in principle that two cumulative criteria be met, namely, first, the contested measure must directly affect the legal situation of the individual and, second, it must leave no discretion to its addressees, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from European Union rules without the application of other intermediate rules.

Accordingly a trade union confederation including as members, in essence, all civil servants and employees of legal persons under public law, and the members of that confederation, are not directly affected by the Council decision giving a Member State notice to take measures to remedy a situation of excessive deficit.

The provision of that decision concerning the measures to be taken by a Member State to reduce the excessive deficit, in so far as it places the obligation on the Member State concerned to achieve a budgetary objective, namely saving a certain sum by reducing the bonuses paid to civil servants, without stipulating either the means of making that reduction or the categories of civil servants affected by it, which factors are left to the discretion of the Member State, is not such as to affect directly the legal situation of the applicants since, in the context of its implementation, the Member State authorities have a wide discretion.

Similarly, the provision of the decision requiring the Member State to adopt a law reforming the pension system with a view to ensuring its medium and long-term sustainability, since it needs the adoption of such a law in order to be implemented and leaves a wide discretion to the Member State authorities to define the content of the law, provided that that law ensured the medium and long-term sustainability of the pension system, is not of direct concern to the applicants since only the national measure could, possibly, directly affect their legal situation.

Furthermore, the provision of that decision instituting a ceiling for the replacement of persons leaving the public sector to retire constitutes a general measure of organisation and management of the public administration and does not directly affect the applicants' legal situation. In so far as that provision brings about a deterioration in the functioning of public services and worsens the applicants' conditions of employment, it is a situation which does not influence their legal situation, but only their factual situation.

Finally, since the final objective is a reduction in the excessive public deficit of the country, the provisions providing for the adoption by the Member State concerned of a certain number of budgetary consolidation measures, measures seeking to reinforce budgetary monitoring and discipline, and structural measures seeking, *inter alia*, to improve the competitiveness of the national economy in general, given their range, require national implementing measures which will specify their content. In the context of that implementation, the authorities of the Member State concerned have a wide discretion, provided that the final objective of reducing the excessive deficit is pursued. It is those national measures which, possibly, will directly affect the legal situation of the applicants.

(see paras 64, 70, 72-74, 76, 78, 80, 84)

2. By Articles 263 TFEU and Article 277 TFEU, on the one hand, and by Article 267 TFEU, on the other, the Treaty has established a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions, and has entrusted such review to the European Union Courts. Under that system, where natural or legal persons cannot, by reason of the conditions for admissibility laid down in Article 263 TFEU, directly challenge European Union measures of general application which require implementing measures by the addressee Member State, they are able, *inter alia*, to plead the invalidity of such acts before the national courts and ask them, since they have no jurisdiction themselves to declare those measures invalid, to make a request to the Court of Justice for a preliminary ruling.

The admissibility of an action for annulment of those measures before the European Union Courts does not depend on whether there is a remedy before a national court enabling the validity of the act to be examined; nor can it depend on the alleged length of the national procedures. Under the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by European Union law.

(see paras 89, 90, 93)