

Form of order sought by the appellant

- Annulment of the judgment of the Civil Service Tribunal of 28 June 2011 in Case F-55/10 *AS v Commission*;
- Order for costs in accordance with the law.

Pleas in law and main arguments

In support of the appeal, the appellant relies on four plea(s) in law.

1. First plea in law, alleging an error of law in that the applicant was held to have an interest in the annulment of the decision rejecting her candidature. The Commission submits:

- First branch: breach of Union law by failure to have regard to the judgment of 9 December 2010 in Case T-526/08 P *Commission v Strack* in so far as the CST acknowledged the right of the person concerned to seek the annulment of the decision rejecting her application for the post at issue despite the fact that she did not ask for annulment of the appointment decision, whereas those two decisions are inseparable;
- Second branch: error in the legal characterisation of the facts in so far as an interest in bringing proceedings was acknowledged in the abstract, without all the evidence having been specifically examined;
- Third branch: wrongful refusal to take account of certain information taken from the medical file which demonstrates that the applicant had no interest in bringing proceedings in this case.

2. Second plea in law, alleging, first, breach of Union law when interpreting and applying the rule of correspondence between the complaint and the action in referring to the judgment of the CST of 1 July 2010 in Case F-45/07 *Mandt v Parliament* and in taking the view that the new plea alleging breach of the Staff Regulations of Officials of the European Union was admissible despite the fact that it was not raised in the complaint and that it was 'substantively' different from the single plea alleging breach of the notice of vacancy put forward in the complaint and, second, breach of Article 91(2) of those Regulations in taking the view that the 'cause of action' is correctly defined as 'challenge by the applicant to the substantive legality of the contested measure or, in the alternative, to its formal legality', which would strip the pre-litigation procedure of all meaning and would no longer serve the purpose of that procedure which is to facilitate an amicable settlement between the person concerned and the appointing authority.

3. Third plea in law, alleging breach of Article 7(1) of the Staff Regulations of Officials and an error in the statement of reasons in so far as the CST interpreted Article 7(1) of those Regulations as granting an absolute right to every official to have access to all posts in his grade. The CST thereby misconstrued the scope of Article 7(1) of the Staff Regulations and of Article 10 of Annex XIII to the Staff Regulations and the explanations given by the Commission regarding the interest of the service.
4. Fourth plea alleging breach of Union law in that the sum of EUR 3 000 was granted by way of compensation for non-material damage whereas the plea alleging breach of Article 7 of the Staff Regulations was not only inadmissible but also unfounded.

Action brought on 6 September 2011 — Spain v Commission

(Case T-481/11)

(2011/C 319/53)

Language of the case: Spanish

Parties

Applicant: Kingdom of Spain (represented by: A. Rubio González)

Defendant: European Commission

Form of order sought

- annul the fifth indent of Point D of Part 2(VI) of Annex I to Commission Implementing Regulation (EU) No 543/2011 of 7 June 2011 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 in respect of the fruit and vegetables and processed fruit and vegetables sectors and,
- order the Commission to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on five pleas in law.

1. First plea in law, alleging breach of the principle of hierarchy of norms
 - The applicant submits that the contested regulation is contrary to the provisions of Article 113(2)(a) of the Council Regulation of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) ⁽¹⁾.

2. Second plea in law, alleging a misuse of powers

— It is alleged in this regard that the Commission, by adopting the contested measure, acted with the main purpose of achieving an end other than that stated, since it departed from the applicable standard adopted by the United Nations Economic Commission for Europe (UN/ECE).

3. Third plea in law, alleging infringement of the duty to state reasons

— It is alleged in this regard that the contested measure has unclear reasoning, which justifies a decision contrary to that finally adopted.

4. Fourth plea in law, alleging breach of the principle of equal treatment

— It is alleged in this regard that the contested measure makes the marketing of citrus fruit subject to conditions that are more stringent than for other fruit and vegetables, without justification.

5. Fifth plea in law, alleging breach of the principle of proportionality

— It is alleged in this regard that the contested measure imposes a more stringent labelling condition on the basis of flawed reasoning that cannot justify the decision finally adopted.

(¹) OJ L 299, 16.11.2007, p. 1/49; last amended by Commission Regulation (EU) No 513/2010 of 15 June 2010 (OJ L 150, 16.6.2010, p. 40) and Regulation (EU) No 1234/2010 of the European Parliament and of the Council of 15 December 2010 (OJ L 346, 30.12.2010, p. 11).

Action brought on 5 September 2011 — Agrucon and Others v Commission

(Case T-482/11)

(2011/C 319/54)

Language of the case: English

Parties

Applicants: Agrupación Española de Fabricantes de Conservas Vegetales (Agrucon) (Madrid, Spain), Associazione Italiana Industrie Prodotti Alimentari (AIIPA) (Milan, Italy), Associazione Nazionale degli Industriali delle Conserve Alimentari Vegetali (Anicav) (Napoli, Italy), Campil-Agro-Industrial do Campo do Tejo, Lda (Cartaxo, Portugal), Evropaiika Trofima AE (Larissa, Greece), FIT — Fomento da Indústria do Tomate, SA (Águas de Moura, Portugal), Konservopoiia Oporokipeftikon Filippou AE (Veria, Greece), Panellinia Enosi Konsepvopoion (Athens, Greece), Elliniki Etairia Konservon AE ('KYKNOS') (Nafplio,

Greece), Anonymos Viomichaniki Etaireia Konservon D. Nomikos (Marousi, Greece), Italagro — Indústria de Transformação de Produtos Alimentares, SA (Castanheira do Ribatejo, Portugal), Kopais Anonymi Viomichaniki Kai Emporiki Etairia Trofimon & Poton (Kopais ABEE) (Maroussi, Greece), Serraiiki Konservopoiia Oporokipeftikon Serko AE (Serres, Greece), Sociedade de Industrialização de Produtos Agrícolas — Sopragol, SA (Mora, Portugal), Sugalidal — Indústrias de Alimentação, SA (Benavente, Portugal), Sutol — Indústrias Alimentares, Lda (Alcácer do Sal, Portugal), Zanae Zýmai Artopoiias Níkoglou AE Viomichanía Empório Trofimon (Thessaloniki, Greece) (represented by: J. da Cruz Vilaça, S. Estima Martins and S. Carvalho de Sousa, lawyers)

Defendant: European Commission

Form of order sought

— Annul the provisions of Article 50(3) and Article 60(7) of Commission Regulation No 543/2011 (¹);

— Order that the present case and case T-454/10 be joined, for the purposes of the oral procedure and of the final judgment, or, at least, for the purposes of the oral procedure; and

— Order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicants rely on three pleas in law.

1. First plea in law, alleging that Commission Regulation No 543/2011 breaches Council Regulation (EC) No 1234/2007 of 22 October 2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ 2007 L 299, p. 1), as:

— It wrongly states that investments and actions related to the transformation of fruit and vegetables into processed fruit and vegetables may be eligible for support; and

— It wrongly included the so-called non-'genuine processing activities' (which apparently cover preparation and post-genuine processing) in the value of marketed production of products intended for processing, as the Single CMO Regulation establishes that the provisions on producer organisations, namely the granting of aid, shall apply only to products covered by the common market organisation for fruit and vegetables.

2. Second plea in law, alleging that by granting to producer organisations aid that covers industrial operations performed over fruit and vegetables intended for processing, also carried out by private industries, Commission Regulation No 543/2011 breaches the principle of non-discrimination which prohibits treating comparable situations differently, unless such treatment is objectively justified.