

Appeal brought on 28 November 2012 by Ralf Schröder against the judgment delivered by the General Court (Second Chamber) on 18 September 2012 in Joined Cases T-133/08, T-134/08, T-177/08 and T-242/09 Ralf Schröder v Community Plant Variety Office

(Case C-546/12 P)

(2013/C 38/15)

Language of the case: German

Parties

Appellant: Ralf Schröder (represented by: T. Leidereiter, W-A. Schmidt, Rechtsanwälte)

Other parties to the proceedings: Community Plant Variety Office (CPVO), Jørn Hansson

Form of order sought

— set aside the judgment of the General Court (Second Chamber) of 18 September 2012, so far as concerns the decision in Case T-242/09 and the decision on costs;

— grant the claim made at first instance for annulment of the decision of the Board of Appeal of the CPVO of 23 January 2009 (Case A 010/2007);

— order the CPVO to bear all the appellant's costs arising from the present proceedings, the proceedings in Joined Cases T-133/08, T-134/08, T-177/08 and T-242/09 before the General Court and the prior proceedings before the Board of Appeal of the CPVO.

Pleas in law and main arguments

I. By the first plea, the appellant submits that the General Court erred in law in proceeding on the basis that in appeal proceedings before the CPVO concerning rejection of an application for cancellation of a Community variety the facts are not to be examined by the CPVO of its own motion. The appellant sees in this an infringement of the rules on the burden of proof and taking of evidence that are applicable in proceedings before the Board of Appeal and a resulting infringement of the General Court's duty of review, as well as an infringement of the appellant's rights to a fair hearing, good administration and an effective remedy.

II. By the second plea, the appellant criticises the General Court's finding that an entitlement to measures of inquiry exists in proceedings before the CPVO only if the party has adduced at least some evidence in support of its application in that regard. Here the appellant complains of infringement of the rules concerning the burden of proof and taking of evidence, denial of the right to be heard and distortion of the facts and the evidence even if it is assumed that the burden of proof rests with the appellant.

III. By the third plea, the appellant submits that the General Court erred in law in assuming a fact to be 'well known' when, according to the appellant, it is an 'incorrect fact', that is to say a fact that is non-existent. Here the appellant pleads infringement of the General Court's duty of review of legality and alleges distortion of facts and evidence.

IV. By the fourth plea, the appellant contends that the General Court made legally incorrect findings on the burden of presentation and of proof in alleging that the appellant adduced no evidence for its submissions concerning the effect of growth regulators. In this connection the appellant pleads that the judgment is contradictory, that the General Court failed to conduct a review of legality and that the grounds stated by the General Court are deficient.

V. By the fifth plea, the appellant criticises the finding of the General Court that the characteristic 'attitude of shoots' of an *Osteospermum* variety was not included in the examination of distinctness or did not determine that examination. This constitutes an infringement of Articles 7 and 20 of the regulation⁽¹⁾ and an impermissible extension of the subject-matter of the dispute, and the General Court's decision infringes the prohibition on taking decisions by surprise. Furthermore, the right to be heard was denied.

VI. By the sixth plea, the appellant contests the General Court's finding that the 'attitude of shoots' of a plant variety is to be determined on the basis of relative criteria, that is to say, in relation to other plants forming part of the examination concerned. According to the appellant, this amounts to distortion of facts, infringement of the regulation, an impermissible extension of the subject-matter of the dispute and infringement of the General Court's duty to conduct a comprehensive review of legality. The decision is therefore contradictory.

⁽¹⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).