

Pleas in law:

— Infringement of Article 42(2) and Article 15(1) of Regulation No 207/2009

— Infringement of Article 8(1)(b) of Regulation No 207/2009

Appeal brought on 15 October 2012 by Luigi Marcuccio against the order of the Civil Service Tribunal of 3 August 2012 in Case F-57/12 R, Marcuccio v Commission

(Case T-464/12 P (R))

(2012/C 379/53)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

— Set aside the order under appeal in its entirety and without exception.

Pleas in law and main arguments

The present appeal is brought against the decision of the President of the Civil Service Tribunal of 3 August 2012 rejecting the application for suspension of the operation of: (i) the Commission's decision rejecting the appellant's request for payment of the sum of EUR 1 661, unlawfully deducted, in the appellant's opinion, from his invalidity allowance; (ii) the Commission's implied decision dismissing the appellant's complaint; and (iii) any decision on the basis of which the Commission deducted the sum of EUR 1 661 from the appellant's invalidity allowance for the months of June, July, August and September 2011.

The appellant relies on two grounds of appeal.

— First ground, alleging absolute failure to state reasons in the order under appeal, distortion and misrepresentation of the facts, reasons which are manifestly illogical, unreasonable and arbitrary, as well as manifest error of assessment with regard to those reasons, in particular with regard to paragraphs 22 to 28 of the order.

— Second ground, alleging incorrect, false and unreasonable interpretation and clear breach of Article 86 of the Rules of Procedure of the Civil Service Tribunal, with regard to the order to 'pay to the Tribunal the sum of EUR 1 000'.

Action brought on 19 October 2012 — AGC Glass Europe and Others v Commission

(Case T-465/12)

(2012/C 379/54)

Language of the case: English

Parties

Applicants: AGC Glass Europe (Brussels, Belgium); AGC Automotive Europe (Fleurus, Belgium); AGC France (Boussois, France); AGC Flat Glass Italia Srl (Cuneo, Italy); AGC Glass UK Ltd (Northampton, United Kingdom); and AGC Glass Germany GmbH (Wegberg, Germany) (represented by: L. Garzaniti, J. Blockx and P. Niggemann, lawyers, and S. Ryan, Solicitor)

Defendant: European Commission

Form of order sought

The applicants claim that the Court should:

— Annul Article 3 of the Decision of the European Commission of 6 August 2012 on the rejection, pursuant to Article 8 of Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings, of a request for confidential treatment submitted by the applicants in relation to Case COMP/39.125 — *Carglass*;

— Order the defendant to pay the costs of the proceedings; and

— Take any other measures that the General Court considers appropriate.

Pleas in law and main arguments

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

1. First plea in law, alleging that the hearing officer breached Article 8 of the terms of reference of the hearing officer⁽¹⁾ and the duty to give reasons under Article 296 TFEU and Article 41(2) of the Charter of Fundamental Rights of the European Union by misconstruing the scope of his competence and considering that he was unable to review the applicants' submissions as to the breach of the principle of legitimate expectations, the principle of equal treatment, and the right to good administration which would be entailed by the publication of the contested information in the Commission's decision in Case COMP/39.125 — *Carglass*.
2. Second plea in law, alleging that in permitting the Commission to publish the contested information, the hearing officer breached the applicants' legitimate expectations, based on the Commission's leniency notices⁽²⁾ and past practices regarding the protection of information submitted in a leniency application, that the information which they submitted in the context of their cooperation with the Commission would not be disclosed to the public to the extent possible.
3. Third plea in law, alleging that the hearing officer infringed the principle of equal treatment by permitting the Commission to take the same approach regarding the publication of a certain category of information with respect to all of the addressees of the Commission's decision in Case COMP/39.125 — *Carglass*, despite the fact that the applicants are in a different position from the other addressees of the decision *vis-à-vis* publication of this information due to their status as the sole leniency applicant in the *Carglass* case.
4. Fourth plea in law, alleging that hearing officer infringes the applicants' right to good administration under Article 41(1) of the Charter of Fundamental Rights of the European Union by permitting the Commission to adopt an arbitrary policy with respect to the publication of a certain category of information in its decisions relating to cartel proceedings.
5. Fifth plea in law, alleging that the hearing officer breaches Article 4 of Regulation (EC) No 1049/2001⁽³⁾ and the Commission's notice on access to file⁽⁴⁾, on the basis that these provisions prevent the Commission from granting members of the public access to documents submitted to the Commission by leniency applicants. By permitting the Commission to publish information which was contained in these documents in the non-confidential version of its decision in Case COMP/39.125 — *Carglass*, the hearing officer allows the Commission to circumvent these provisions.
6. Sixth plea in law, alleging that the hearing officer breaches the obligation of professional secrecy under Article 339 TFEU and Article 28 of Council Regulation (EC) No 1/2003⁽⁵⁾ by considering that the contested information is not confidential information and can be disclosed by the Commission. The hearing officer commits manifest errors of assessment as to the application of the criteria for the confidentiality of information in the case law of the Court, and fails to apply the balancing of interests required by the case law in his assessment.

⁽¹⁾ Decision 2011/695/EU of the President of the European Commission of 13 October 2011 on the function and terms of reference of the hearing officer in certain competition proceedings (OJ 2011 L 275, p.29)

⁽²⁾ Commission notice on immunity from fines or alternatively reduction of fines in cartel cases (OJ 2002 C 45, p.3); Commission Notice on Immunity from fines and reduction of fines in cartel cases (OJ 2006 C 298, p. 17)

⁽³⁾ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p.43).

⁽⁴⁾ Commission Notice on the rules for access to the Commission file in cases pursuant to Articles 81 and 82 of the EC Treaty, Articles 53, 54 and 57 of the EEA Agreement and Council Regulation (EC) No 139/2004 (OJ 2005 C 325, p.7).

⁽⁵⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p.1).