

## GENERAL COURT

**Appeal brought on 9 June 2016 by Valéria Anna Gyarmathy against the judgment of the Civil Service Tribunal of 18 May 2015 in Case F-79/13 Gyarmathy v EMCDDA**

**(Case T-297/16 P)**

(2016/C 364/09)

*Language of the case: English*

### Parties

*Appellant:* Valéria Anna Gyarmathy (Győr, Hungary) (represented by: A. Végely, lawyer)

*Other party to the proceedings:* European Monitoring Centre for Drugs and Drug Addiction

### Form of order sought by the appellant

The appellant claims that the Court should:

- repeal and overturn the contested judgment brought by the Civil Service Tribunal on 18 May 2015 in Case F-79/13, *Gyarmathy v EMCDDA*;
- annul the (former) EMCDDA Director's decision of 11 September 2012 rejecting the appellant's request for assistance;
- annul the (former) EMCDDA Director's decision of 14 September 2012 not to renew the appellant's employment contract;
- annul the (former) Chairman of the EMCDDA Management Board's decision of 13 May 2013 and the (former) EMCDDA Director's decision of 25 June 2013 respectively.

### Pleas in law and main arguments

In support of the appeal, the appellant relies on two pleas in law.

1. First plea in law: The claim for annulment of the EMCDDA Director's decision of 11 September 2012 rejecting the appellant's request for assistance:

The appellant contends that in its first-instance judgment brought in Case F-79/13 on 18 May 2015, The Civil Service Tribunal, by stating that the appellant's grievances were properly handled by the Agency administration, distorts the facts and contradicts the ample documentary evidence available in the case-file. The (former) EMCDDA Director rejected the appellant's request for assistance, first and foremost, her transfer request to relieve her from the long-term and extensive bullying and harassment she was suffering from her immediate superior. The (former) Director violated his obligation to provide assistance and his duty of solicitude and good administration (judgments of 27 November 2008, *Klug v EMEA*, F-35/07, EU:F:2008:150, paragraph 74; and of 12 July 2011, *Commission v Q*, T-80/09 P, EU:T:2011:347, paragraph 84). Based on facts and evidence, available in the case-file, Article 24 of the Staff Regulations, and the relevant, settled case-law, the (former) EMCDDA Director, acting in his capacity as Appointing Authority, did not provide the appellant with the requested assistance and did not take the necessary measures to protect the tranquility of the service in general, and the appellant from the mistreatment she became victim of in particular. Consequently, the first-instance judgment of the Civil Service Tribunal, with regard to the first plea, is factually incorrect, and furthermore it is contrary to the Community legislation and the settled case-law. As such, it must be repealed and overturned, and the contested decision must be annulled.

2. Second plea in law: The claim for annulment of the decision of 14 September 2012 not to renew the appellant's employment contract:

The contested first-instance judgment of the Civil Service Tribunal relied on the reasoning that the (former) EMCDDA Director's decision of 19 December 2012 is one aimed at the appellant's formal complaint of 10 December 2012, challenging — including but not limited to — the (former) Director's decision of 14 September 2012 not to renew the appellant's employment contract. However, as it is obvious from the mere wording of the referred letter, it is impossible to interpret it as such. Instead, it is a decision about initiating an administrative inquiry based on the appellant's complaint. In addition, in this very same letter the (former) Director denies having made a decision at all with regard to the appellant's employment contract. Furthermore, even if the manifestly wrong interpretation of the contested decision were to be upheld, it is still against the law and illegal, since the appellant had not been heard before (judgment of 12 December 2013, *CH v Parliament*, F-129/12, EU:F:2013:203) and it is constituted a mere preparatory act (judgment of 16 March 2009, *R v Commission*, T-156/08 P, EU:T:2009:69) and as such, could not be independently challenged (judgment of 10 November 2009, *N v Parliament*, F-71/08, EU:F:2009:150; and order of 23 October 2012, *Possanzini v Frontex*, F-61/11, EU:F:2012:146). The contested decision also constituted a misuse of powers (judgments of 19 October 1995, *Obst v Commission*, T-562/93, EU:T:1995:181; of 12 December 2000, *Dejaiffe v OHIM*, T-223/99, EU:T:2000:292; and judgment of 25 September 2012, *Bermejo Garde v EESC*, F-41/10, EU:F:2012:135) based on evidence available in the case-file. It is even questionable whether the (former) EMCDDA Director had the power of authority at the time of making the contested decision (order of 25 October 1996, *Lopes v Court of Justice*, T-26/96, EU:T:1996:157). It must be reminded that the Defendant failed to lodge a defence, which in turn led to a judgment by default. In the reasoning of the contested first-instance judgment, the Tribunal relied on an argument of the Defendant's defence lodged in a different case (F-22/14, *Gyarmathy v EMCDDA*), and thereby violated procedural boundaries. The Civil Service Tribunal's first-instance judgment with regards to the second plea is also contrary to the facts and evidence, available in the case-file. It constitutes a manifest violation of procedural boundaries. As such, it must be repealed and overturned, and the contested decision must be annulled.

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**Action brought on 13 July 2016 — Düll v EUIPO — Cognitect (DaToMo)**

**(Case T-381/16)**

(2016/C 364/10)

*Language in which the application was lodged: German*

**Parties**

*Applicant:* Klaus Düll (Südergellersen, Germany) (represented by: S. Wolff-Marting, lawyer)

*Defendant:* European Union Intellectual Property Office (EUIPO)

*Other party to the proceedings before the Board of Appeal:* Cognitect, Inc. (Durham, North Carolina, United States)

**Details of the proceedings before EUIPO**

*Proprietor of the trade mark at issue:* Applicant

*Trade mark at issue:* EU word mark 'DaToMo' — EU trade mark No 6 715 627

*Procedure before EUIPO:* Revocation proceedings

*Contested decision:* Decision of the Second Board of Appeal of EUIPO of 19 April 2016 in Joined Cases R 1383/2015-2 and R 1481/2015-2