Pleas in law and main arguments

In support of the action, the applicant puts forward six pleas in law.

The applicant argues, in particular, that the Board of Appeal exceeded its powers in that, in the context of the appeal proceedings, it comprehensively examined the evaluation decision and re-assessed it, and thereby arrived at the (both formally and substantively unjustified) conclusion that the decision of the Member States should be partially annulled and amended.

1. First plea in law, alleging that the Board of Appeal lacks competence in regard to substantive issues relating to the evaluation procedures.

2. Second plea in law, alleging infringement of the *Meroni* line of case-law of the Court of Justice, since the Board of Appeal, as a body of an EU agency, does not have any decision-making power of its own.

3. Third plea in law, alleging infringement of the principle of subsidiarity and of the principle of limited conferral of powers, in that the Board of Appeal infringed the rights of the Member States, institutionalised through their decision-making power within the Agency's Member State Committee, as there is no legal basis in EU law for the Board of Appeal's action.

4. Fourth plea in law, alleging infringement of the provisions of the REACH Regulation ([1]) by reason of the absence of any power of review on the part of the Board of Appeal in relation to the substance of assessment decisions.

5. Fifth plea in law, alleging infringement of the obligation to state reasons under the second paragraph of Article 296 TFEU, since the Board of Appeal failed to establish its purported power of review.

6. Sixth plea in law, alleging that the contested decision is substantively incorrect and unlawful.

([1]) Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ 2006 L 396, p. 1).

Action brought on 10 November 2017 — Kerstens v Commission

(Case T-757/17)

(2018/C 032/52)

Language of the case: French

Parties

Applicant: Petrus Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the Commission's decision of 27 March 2017 addressed to the applicant in so far as it orders that Case CMS 15/017 is to be recommenced *ab initio*;

— annul the Commission's decision of 7 April 2017 addressed to the applicant in so far as it orders that Case CMS 12/063 is to be recommenced *ab initio*;

— award the applicant compensation amounting to EUR 40 000, by way of special non-material damages, to be paid by the European Commission;

— order the Commission to pay the costs, in accordance with Article 134 of the Rules of Procedure of the General Court.

Pleas in law and main arguments

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

1. First plea in law, alleging that there has been a failure to comply with the annulling judgment of 14 February 2017, *Kerstens* v *Commission* (T-270/16 P, not published, EU:T:2017:74) and infringement of the principle of *ne bis in idem* on the part of the appointing authority, which decided to reopen the disciplinary proceedings to which the applicant had been subject.

2. Second plea in law, alleging that there has been a failure to comply with the judgment cited above and infringement of the principle of sound administration including the obligation to treat cases fairly and impartially, infringement of the principle of presumption of innocence, and a breach of the rights of the defence, in so far as the decisions to reopen those disciplinary proceedings do not guarantee impartial and fair treatment of the applicant's case.

3. Third plea in law, alleging that there has been a failure to comply with the judgment cited above and infringement of the principles of legal certainty and sound administration, and, in particular, of the reasonable time principle, given that, according to the applicant, new disciplinary proceedings must also take place within a reasonable time, which is not the situation in the present case.

4. Fourth plea in law, requesting special damages following the irregularities mentioned above by way of compensation for the non-material damage which the administrative authorities have allegedly caused the applicant, since, in his view, the annulment of the contested acts is not sufficient, in itself, to compensate for that damage.

Action brought on 17 November 2017 — UR v Commission

(Case T-761/17)

(2018/C 032/53)

Language of the case: French

Parties

Applicant: UR (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the selection board of 11 August 2017, taken following a review, not to include his name on the reserve list for Competition EPSO/AD/322/16;

— in any event, order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the selection board made a manifest error of assessment in considering that the applicant's diploma did not satisfy one of the conditions for admission to the competition.

2. Second plea in law, alleging, in the alternative, that the competition notice is unlawful, based on the first paragraph of Article 27 of the Staff Regulations of Officials [of the European Union]. In particular, the applicant argues that the condition for admission at issue is not connected with the requirements of the posts to be filled as described in the competition notice and is, therefore, contrary to the interests of the service.

3. Third plea in law, alleging, in the further alternative, that the contested decision lacks a statement of reasons, inasmuch as the criteria established by the selection board for assessing the relevance of the applicant's diploma in the light of the condition for admission at issue have not been disclosed, which the applicant argues has prevented him from being able to prepare an adequate defence.
