

Defendant: État belge, represented by the Secrétaire d'État à l'Asile et la Migration

Questions referred

1. Must Articles 7 and 47 of the Charter of Fundamental Rights of the European Union and Articles 5, [6(6)] and 13 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals,⁽¹⁾ read in the light of the judgment [of 19 June 2018, *Gnandi* (C-181/16, EU:C:2018:465)], be interpreted as meaning that a court hearing an appeal against a return decision adopted pursuant to a decision refusing to grant international protection, when assessing the legality of the return decision, may take account of changes in circumstances that may have a significant bearing on the assessment of the situation under Article 5 cited above, only where those changes occurred prior to the disposal of the international protection proceedings by the Council for asylum and immigration proceedings?
2. Must the circumstances referred to in Article 5 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals have arisen at a time when the foreign national was legally resident or allowed to remain?

⁽¹⁾ OJ 2008 L 348, p. 98.

Appeal brought on 25 November 2021 by Frédéric Jouvin against the order of the General Court (Eighth Chamber) delivered on 26 April 2021 in Cases T-472/20 and T-472/20 AJ II, Jouvin v Commission

(Case C-719/21 P)

(2022/C 64/34)

Language of the case: French

Parties

Appellant: Frédéric Jouvin (represented by: L. Bôle-Richard, avocat)

Other party to the proceedings: European Commission

Form of order sought

The appellant claims that the Court should:

- Set aside the order of the General Court of the European Union of 26 April 2021 in Cases T-472/20 and T-472/20 AJ II, Jouvin v Commission, in so far as it dismissed the action as manifestly lacking any foundation in law;
- Grant the forms of order sought at first instance and refer the matter back to the Commission;
- Order the Commission to pay the costs.

Grounds of appeal and main arguments

In support of the appeal, the appellant relies on three grounds.

The first ground of appeal alleges a manifestly incorrect characterisation of the facts presented for the assessment of the General Court, an error by the General Court in the finding of the content of proof and an error of law regarding the level of proof required. According to the appellant, the General Court erred in law making an incorrect legal characterisation of the facts brought for its determination. The General Court points out that the very significant number of counterfeiters does not call into question the finding made by the Commission as regards the absence of proof of collusion among the undertakings that are the subject of the appellant's complaint. As it is, the finding of the significant and exponential number of counterfeiters is not intended to demonstrate the existence of collusion, but appears to be a consequence of the latter.

The proof of that collusion was adduced by the appellant who demonstrated that the undertakings participating in standardisation work had been contacted beforehand in order to be granted licences on his patent portfolio. Following the failure of the negotiations, all of the contacted undertakings took part in standardisation work at the ISO and none of them complied with its obligations of stating the knowledge of all patents that could be linked to the standard being drawn up. Those factors make up the collusion infringement that led to the exponential increase in the number of counterfeiters.

The appellant also relies on the ground of appeal alleging an error in law in relation to the level of proof required by the Commission and then by the General Court in its order to demonstrate the existence of collusion between the undertakings referred to.

The second ground of appeal alleges the failure to consider the facts brought to the knowledge of the General Court. According to the appellant, the General Court held that the arguments of the appellant regarding market sharing were not raised during the administrative procedure. However, the appellant raised that argument during the administrative procedure, in a letter of 15 May 2018 addressed to the Commission, more than two years before the final decision of the Commission rejecting the appellant's complaint. Therefore, the General Court erred in law by failing to determine the actual content of proof brought to its knowledge.

Lastly, the third ground of appeal alleges an error of law of the General Court in the finding of the content of proof. The General Court considers that the appellant requests it, in essence, to find an infringement of the competition rules. However, the appellant submits that the Commission, in assessing the proper weight of the matters brought to its attention during the administrative procedure, should necessarily have found collusion between the undertakings referred to by the complaint and consequently an infringement of the competition rules.

As to the finding of discrimination suffered by the appellant, the appellant, in his application, merely expanded on the arguments already submitted during the administrative procedure and explained the manifest error of assessment committed by the Commission by not taking into consideration the facts adduced by the appellant. By maintaining that the appellant did not provide any argument referring to the manifestly contested decision, the General Court breached its obligation to state reasons while all the arguments of the appellant sought, however, to demonstrate the manifest error of assessment committed by the Commission.

As to the characterisation of collusion, the appellant also criticises the Commission for a manifest error of assessment. The appellant by no means sought a direct finding of an infringement of the competition rules from the General Court, but rather that it hold that the analysis of facts brought to the knowledge of the Commission should have led the Commission undisputedly to find itself an infringement of the competition rules and a clear infringement of its own recommendations.

**Request for a preliminary ruling from the Županijski sud u Puli-Pola (Croatia) lodged on
30 November 2021 — Criminal proceedings against GR, HS, IT, INTER CONSULTING d.o.o., in
liquidation**

(Case C-726/21)

(2022/C 64/35)

Language of the case: Croatian

Referring court

Županijski sud u Puli-Pola

Parties to the main proceedings

GR, HS, IT, INTER CONSULTING d.o.o., in liquidation