

Action brought on 27 February 2023 — Kargins v Commission**(Case T-110/23)**

(2023/C 173/42)

*Language of the case: English***Parties***Applicant:* Rems Kargins (Riga, Latvia) (represented by: O. Behrends, lawyer)*Defendant:* European Commission**Form of order sought**

The applicant claims that the Court should:

- annul the Commission's decision dated 12 December 2022 and received on 16 December 2022 with respect to the applicant by which the Commission rejected the applicant's request for access to documents pursuant to the rules governing public access to documents;
- order the defendant to bear the costs of the applicant.

Pleas in law and main arguments

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

1. First plea in law, alleging that the list of documents provided by the defendant in the contested decision is manifestly incomplete.
2. Second plea in law, alleging that the defendant illegitimately redacted significant parts of the documents.
3. Third plea in law, alleging that the defendant illegally denied access to fourteen documents and that it did so on the basis of an incorrect interpretation and application of Article 4(2) of Regulation 1049/2001 ⁽¹⁾ with respect to the potential undermining of court proceedings.
4. Fourth plea in law, alleging that the defendant's position as to a potential overriding public interest is vitiated by a number of defects including, inter alia, that the defendant did not refer to any harm in disclosure, that it did not consider the political and economic significance of the present case, and it did not consider the public interest in being able to assess the difference between a legitimate *amicus curiae* letter and an illegitimate interference by the Commission with the administration of justice in a Member State, by pointing out to the national court in charge of hearing an appeal adverse consequences for the Member State concerned as a result of adverse action taken by the Commission if the decision of the lower courts is not overturned.
5. Fifth plea in law, alleging that the defendant failed to grant the applicant access to the file.
6. Sixth plea in law, alleging that, by issuing the contested decision to the applicant almost one year after the confirmatory application was sent, the deadline pursuant to Article 8(1) and (2) of Regulation 1049/2001 was violated in such an egregious manner as to constitute a denial of access at the relevant time.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

Action brought on 2 March 2023 — Debreceni Egyetem v Council**(Case T-115/23)**

(2023/C 173/43)

*Language of the case: Hungarian***Parties***Applicant:* Debreceni Egyetem (Debrecen, Hungary) (represented by: J. Rausch and Á. Papp, lawyers)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- on the basis of Article 263 TFEU, annul, with *ex tunc* effect, that is to say retroactively from the moment of its adoption, Article 2(2) of Council Implementing Decision (EU) 2022/2506 (1) of 15 December 2022 on measures for the protection of the Union budget against breaches of the principles of the rule of law in Hungary;
- order the defendant to pay all the costs incurred by the applicant in respect of the present proceedings.

Pleas in law and main arguments

In support of the action, the applicant relies on 19 pleas in law.

1. First plea in law, alleging infringement of Article 2 TEU

- Failure to respect the rule of law and miscarriage of justice: educational establishments maintained by public-interest trusts did not participate in the procedure that preceded the adoption of the implementing decision and are sanctioned as a result of legislative acts approved by the Hungarian legislature.
- Failure to respect the principle of legal certainty and normative clarity: the group of persons accused of having conflicts of interests, that is to say, 'senior political executives', is not a precise concept, and thus gives rise to arbitrary interpretations and an application of the law that is liable to lead to abuse.
- Failure to respect the principle of equality and failure to comply with the prohibition of discrimination: the implementing decision discriminates against Hungarian educational establishments maintained by public-interest trusts vis-à-vis those operating under another maintenance model.

2. Second plea in law, alleging infringement of Article 4 TEU

- Failure to comply with the prohibition on depriving Member States of their competences: education and scientific research — and, therefore, the tasks of guaranteeing the functioning of higher-education establishments and designing the framework in which they operate — fall within the exclusive competence of the Member States, a competence which the implementing decision denies Hungary, since there is direct interference in the functioning of Hungarian educational establishments.

3. Third plea in law, alleging infringement of Article 5 TEU

- Failure to respect the principle of subsidiarity: the decision makes it possible to impose financial penalties directly on legal entities other than the addressee of that decision, having failed to consider beforehand whether Hungary is in a position to protect the financial interests of the European Union.
- Failure to respect the principle of proportionality: the suspension of payments is a form of financial retaliation so serious that its application is only justified in the event of a manifest and immediate breach of rights; moreover, it has long-term effects.

4. Fourth plea in law, alleging infringement of Article 7 TEU

- Lack of an impact evaluation: the possible consequences for the rights and obligations of natural and legal persons were not taken into account.

5. Fifth plea in law, alleging infringement of Article 9 TEU

- Failure to respect the equality of EU citizens: those adversely affected by the measure are teaching staff, researchers and students who have submitted the relevant applications, whose own studies, teaching and research are made impossible due to the suspension of payment.

6. Sixth plea in law, alleging infringement of Article 11 TEU
 - No consultations were carried out with higher-education establishments maintained by public-interest trusts, nor with their students, teaching staff, researchers or partners.
7. Seventh plea in law, alleging infringement of Article 2 TFEU
 - The FEU Treaty did not confer on the European Union, in the area of policy relating to education and scientific research, the powers that were exercised in the implementing decision.
8. Eighth plea in law, alleging infringement of Article 9 TFEU
 - The implementing decision does not contribute to a high level of education and training; furthermore, it leads to long-term negative effects on the academic, scientific and training levels for students, teaching staff and researchers at Hungarian higher-education establishments maintained by foundations.
9. Ninth plea in law, alleging infringement of Article 56 TFEU
 - The implementing decision limits the rights of EU citizens who are not Hungarian nationals (students, teaching staff, researchers) who carry on their activity in Hungarian educational establishments maintained by public-interest trusts.
10. Tenth plea in law, alleging infringement of Article 67 TFEU
 - By withdrawing funding, the implementing decision makes it impossible for establishments maintained by public-interest funds to function and represents an attack on the legal framework in which those establishments operate, that is to say, an indirect attack on the (different) autonomous Hungarian legal system and traditions particular to Hungary.
11. Eleventh plea in law, alleging infringement of Article 120 TFEU
 - The discriminatory and disproportionate effects of the measure are manifest and also create an unjustified competitive disadvantage for higher-education establishments maintained by public-interest trusts.
12. Twelfth plea in law, alleging infringement of Article 124 TFEU
 - The implementing decision suspended funding to various recipients and, at the same time, distributed those funds to other entities.
13. Thirteenth plea in law, alleging infringement of Article 165 TFEU
 - The implementing decision does not contribute to the development of quality education but, in reality, seriously harms it and stands in its way.
14. Fourteenth plea in law, alleging infringement of Article 179 TFEU
 - The withdrawal of funding from the Erasmus+ programme for cooperation and educational exchange and from the Horizon Europe framework programme for research and innovation is a clear obstacle to the free movement of researchers, scientific knowledge and technology, and to the development of its competitiveness.
15. Fifteenth plea in law, alleging infringement of Article 13 of the Charter of Fundamental Rights of the European Union ('the Charter')
 - An obvious effect of the implementing decision is the change in how Hungarian higher-education establishments operating under the new model function.
16. Sixteenth plea in law, alleging infringement of Article 2 TEU
 - In the defendant's view, the conflict of interests that provides the basis and reasons for the implementing decision does not exist.

17. Seventeenth plea in law, alleging infringement of Article 48 of the Charter

- The implementing decision directly sanctions the applicant despite the fact that in its case the political conflict of interests relied on to justify that sanction does not exist, which amounts to a serious and manifest breach of the presumption of innocence.

18. Eighteenth plea in law, alleging infringement of Article 52 of the Charter

- Given that, as regards the applicant, there is no de facto political conflict of interests, the implementing decision fails to comply with the requirements of necessity and proportionality.

19. Nineteenth plea in law, alleging infringement of the Enabling Regulation⁽²⁾

- The Council has adopted the implementing decision without having verified, on the merits and specifically, the existence of the political conflict of interests that formed the basis of that decision.

⁽¹⁾ OJ 2022 L 325, p. 94.

⁽²⁾ Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget (OJ 2020 L 433I, p. 1).

Action brought on 8 March 2023 — Synapsa Med v EUIPO — Gravity Products (Gravity)
(Case T-125/23)
(2023/C 173/44)

Language in which the application was lodged: Polish

Parties

Applicant: Synapsa Med sp. z o.o. (Jelcz Laskowice, Poland) (represented by: G. Kuchta, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Gravity Products LLC (New York, United States)

Details of the proceedings before EUIPO

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: EU word mark 'Gravity' — EU trade mark No 17 982 729

Proceedings before EUIPO: Cancellation proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 9 January 2023 in Case R 923/2022-5

Form of order sought

The applicant claims that the Court should:

- alter the decision of 9 January 2023 of the Fifth Board of Appeal of EUIPO by upholding the appeal against the decision of 11 April 2022 declaring the EU word mark GRAVITY ZTUE-017982729 invalid and dismiss the application for a declaration of invalidity.

Pleas in law

- Infringement of Article 95(1) of Regulation (EU) 2017/1001 of the European Parliament and of the Council, and of Articles 7(2), 7(3), 16 and 17(3) of Commission Delegated Regulation (EU) 2018/625;
 - Infringement of Articles 60(1)(a) and 8(1)(b) of Regulation (EU) 2017/1001 of the European Parliament and of the Council.
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