

ORDER OF THE COURT OF FIRST INSTANCE**of 16 December 1999****in Case T-153/99, Luciano Simonella v Commission of the European Communities⁽¹⁾****(Officials — Non-promotion — Action for annulment and damages — Manifestly inadmissible)**

(2000/C 102/54)

(Language of the case: French)

In Case T-153/99, Luciano Simonella, official of the Commission of the European Communities, residing in Howald (Grand Duchy of Luxembourg), represented by Rosario Grasso, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 35 Rue Notre Dame, against Commission of the European Communities (Agents: Christine Berardis-Kayser and Alberto Dal Ferro) — application, first, for annulment of the decision implicitly rejecting the applicant's complaint lodged on 25 November 1998 and, second, for compensation for the material and non-material damage suffered — the Court of First Instance (Second Chamber), composed of J. Pirrung, President, and A. Potocki and A.W.H. Meij, Judges; H. Jung, Registrar, has made an order on 16 December 1999, the operative part of which is as follows:

1. *The action is dismissed as inadmissible.*
2. *The parties shall bear their own costs.*

(¹) OJ C 246 of 28.8.1999.

Action brought on 15 November 1999 by Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB) and Others against the Council of the European Union

(Case T-268/99)

(2000/C 102/55)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 15 November 1999 by the Fédération Nationale d'Agriculture Biologique des Régions de France (FNAB) and the Syndicat Européen des Transformateurs et Distributeurs de Produits de l'Agriculture Biologique (SETRAB), both established in Paris, and by SARL Est Distribution Biogram, established at Château-Salins (France), represented by Catriona Hatton and Dirk Leermakers, of the Brussels Bar, with an address for service in Luxembourg at the latter's Chambers, 5 Place du Théâtre.

The applicants claim that the Court should:

- declare that the derogation provided for in Article 1(7) of Council Regulation No 1804/99 is severable in nature, and annul that derogation;
- order the Council to pay all the costs.

Pleas in law and main arguments

The applicants in the present case are professional bodies recognised by the French Ministry of Agriculture and comprising regional groups of organic farmers, with the object of defending and representing their interests and promoting organic farming.

The application is directed against Council Regulation (EC) No 1804/1999 of 19 July 1999 supplementing Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs to include livestock production, inasmuch as it provides for the insertion in Article 5 of Regulation No 2092/91 of a derogation permitting the continued use, until 1 July 2006, of trade marks referring to the organic production method in order to designate products which are not produced by that method, provided that a clear indication is given of the fact that the products are not produced according to the organic production method as prescribed by that regulation.

In support of their claims, the applicants plead, first of all, infringement of the Community rules on competition, in that the derogation in issue will have the immediate effect of placing undertakings producing organic foodstuffs at a disadvantage, by enabling undertakings which are not in any way engaged in organic farming to use trade marks referring to the organic production method.

Moreover, the confusion created in the mind of the consumer by the new Article 5 of Regulation No 2092/91 also violates the principle of consumer protection, as defined in Article 3(t) of the Treaty. In the applicants' view, a reasonably well-informed consumer is likely to treat products bearing an indication which refers to the organic production method as comparable to products which have in fact been produced by that method. Consequently, such trade marks, when applied to products which have not in any way been produced by organic methods, will inevitably give rise to confusion in the minds of consumers.

The applicants further plead:

- breach of an essential procedural requirement, in that the Council failed to consult the Parliament with regard to the derogation at issue in the present proceedings;