

Appeal brought on 26 January 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal of 10 November 2009 in Case F-70/07, Marcuccio v Commission

(Case T-38/10 P)

(2010/C 80/68)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal.
- Declare that the action at first instance, in relation to which the order under appeal was made, was admissible in its entirety and without any exception whatsoever.
- Allow in its entirety and without any exception whatsoever the relief sought at first instance.
- Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.
- In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 10 November 2009. That order dismissed as manifestly inadmissible the first, second, third and sixth heads of claim in an action for an order that the Commission pay compensation for the damage allegedly

suffered as a result of the refusal to reimburse the appellant in respect of the recoverable costs purportedly incurred in Case T-176/04 *Marcuccio v Commission*.

In support of his claims, the appellant alleges misinterpretation and misapplication of the concept of a request within the meaning of Articles 90 and 91 of the Staff Regulations, illogical and unreasoned failure to have regard to the relevant case-law, absolute failure to state reasons, breach of the obligation to disregard the defence when it is lodged out of time, an error in accepting a document entitled 'application for a declaration that there is no need to adjudicate', and infringement of Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of the European Union.

Appeal brought on 3 February 2010 by Luigi Marcuccio against the order of the Civil Service Tribunal of 25 November 2009 in Case F-11/09, Marcuccio v Commission

(Case T-44/10 P)

(2010/C 80/69)

Language of the case: Italian

Parties

Appellant: Luigi Marcuccio (Tricase, Italy) (represented by G. Cipressa, lawyer)

Other party to the proceedings: European Commission

Form of order sought by the appellant

- In any event, set aside in its entirety and without exception the order under appeal.
- Declare that the action at first instance, in relation to which the order under appeal was made, was admissible in its entirety and without any exception whatsoever.
- Allow in its entirety and without any exception whatsoever the relief sought by the appellant at first instance.

- Order the Commission to reimburse the appellant in respect of all costs, disbursements and fees incurred by him in relation to both the proceedings at first instance and the present appeal proceedings.
- In the alternative, refer the case back to the Civil Service Tribunal, sitting in a different formation, for a fresh decision.

Pleas in law and main arguments

The present appeal is brought against the order of the Civil Service Tribunal (CST) of 25 November 2009. That order dismissed as partly manifestly inadmissible and partly manifestly unfounded an action brought against the Commission's refusal to assume responsibility for 100 % of the appellant's medical expenses.

In support of his claims, the appellant alleges misinterpretation and misapplication of the principle that reasons must be given for a decision of an institution of the European Union, the concept of additional reasoning for a decision and the legal principles relating to the taking and assessment of evidence.

The appellant also alleges misinterpretation and misapplication of the concepts of a challengeable act and a decision which merely confirms an earlier decision.

Action brought on 10 February 2010 — SP v Commission

(Case T-55/10)

(2010/C 80/70)

Language of the case: Italian

Parties

Applicant: SP SpA in liquidazione (Brescia, Italy) (represented by: G. Belotti, lawyer)

Defendant: European Commission

Form of order sought

- Annul the Commission's decision of 8 December 2009 amending the earlier decision — C(2009) 7492 final — adopted by the Commission on 30 September 2009;

- Order the defendant to pay the costs.

Pleas in law and main arguments

By decision of 8 December 2009 ('the contested decision'), the Commission amended its earlier decision — C(2009) 7492 final of 30 September 2009 — by which it had accused a number of companies, including the applicant, of participating in an alleged cartel. By the contested decision, the Commission acknowledged that the decision of 30 September 2009 'referred to an annex which set out tables illustrating the price movements for concrete reinforcing bars during the time when the cartel was in operation' and that 'that annex was not included in the decision adopted on 30 September 2009', and decided to amend that decision in order to incorporate within it the tables annexed to the contested decision.

In support of its action, the applicant puts forward the following pleas in law:

1. Illegality of the subsequent rectification of a measure vitiated by a grave defect: the Commission is not empowered to remedy after the event a decision which, being clearly incomplete at the time of adoption, is manifestly invalid; that constitutes a particularly grave circumstance which, as such, cannot be remedied.
2. Incorrect legal basis cited: the Commission cited as the legal basis for the contested measure Article 65 CS and Regulation (EC) No 1/2003, ⁽¹⁾ which are manifestly inappropriate as legal bases for pursuing the aim which the Commission had set itself (that is to say, for supplementing/amending one of its earlier decisions, the text of which had been incomplete). Accordingly, the second decision, which is contested in these proceedings, must be annulled because of the clear lack of an appropriate legal basis.

The applicant also alleges breach of the principle of sound administration.

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2003 L 1, p. 1).