

Action brought on 10 March 2022 — Hamoudi v Frontex

(Case T-136/22)

(2022/C 198/76)

*Language of the case: English***Parties***Applicant:* Alaa Hamoudi (Turkey) (represented by: F. Gatta, lawyer)*Defendant:* European Border and Coast Guard Agency**Form of order sought**

The applicant claims that the Court should order Frontex to pay the applicant the amount of EUR 250,000 by way of damages in respect of non-material damage with regard to each of the two heads of claim. In particular, the applicant claims compensation:

- for the damage suffered by him as a result of violations of his fundamental rights under articles 1, 2, 3, 4, 18, 19(1), 19(2) and 21 of the EU Charter of Fundamental Rights ('CFR') during and following his collective expulsion from Greece which lasted from 28 to 29 April 2020 in the Aegean Sea;
- for his feelings of injustice and frustration caused to him by the fact that the author or co-author of the collective expulsion directed against him on the 28–29 April 2020 was an agency of the European Union.

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 Frontex approved the launching of RBI Aegean in violation of Art. 46(5) of Regulation 2019/1896⁽¹⁾, in a manifest error of assessment, misuse of power, and while failing to act with due diligence, thereby failing to observe the principle of sound administration. In particular, Frontex's ED has unlawfully approved the launching of RBI Aegean, in breach of Art. 46(5) of the Agency's founding regulation, by not exercising his discretionary powers with regards to the very examination of the applicability of this provision to the extremely volatile situation to be regulated. In the alternative, the ED committed a manifest error of assessment and misuse of power, and failed to fulfil his duty to act with diligence in considering that Art. 46(5) does not apply to the situation to be regulated. Both the first and the second aspects of the non-material damage would not have occurred without the unlawful omission or conduct attributable to Frontex.
2. Second plea in law, alleging that Frontex committed an unlawful omission capable of giving rise to non-contractual liability, when failing to act in accordance with Art. 46(4) of Regulation 2019/1896, in infringement of its positive obligations according to Art. 80 of that regulation and articles 1, 2, 3, 4, 18, 19(1), 19(2) and 21 of the CFR⁽²⁾, the principle of sound administration, and in a misuse of power and manifest error of assessment.

Frontex's ED has unlawfully failed to exercise his discretionary powers in relation to Art. 46(4) of the Agency's founding regulation before, during and also after the occurrence of the pushback operation of 28–29 April 2020. In the alternative, the ED committed a manifest error of assessment and misuse of power, and failed to fulfil his duty of diligence, in considering that Art. 46(4) does not apply to the situation to be regulated. Both aspects of the non-material damage would not have occurred without the contested unlawful failure to act of Frontex.

3. Third plea in law, alleging that Frontex committed an unlawful act capable of giving rise to non-contractual liability, in relation to the pushback operation of the 28–29 April 2020, by infringing the applicant's fundamental rights under articles 1, 2, 3, 4, 6, 18, 19(1), 19(2) and 21 of the CFR.

The unlawful collective expulsion of the applicant on 28–29 April 2020 is attributable to Frontex, its ‘true author’, since it was executed in line with the legally binding Operational Plan for RBI Aegean, drafted by Frontex’s ED. In the alternative, Frontex incurs liability based on its aiding and assisting in the commission of the unlawful collective expulsion of the applicant taking place on 28–29 April 2020. Both aspects of non-material damage would not have occurred without the contested unlawful conducts of the Agency.

⁽¹⁾ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No 1052/2013 and (EU) 2016/1624.

⁽²⁾ OJ 2012, C 326, p. 391.

Action brought on 14 March 2022 — Netherlands v Commission

(Case T-137/22)

(2022/C 198/77)

Language of the case: Dutch

Parties

Applicant: Kingdom of the Netherlands (represented by: and M. Bulterman and J. Langer, acting as Agents)

Defendant: European Commission

Form of order sought

The applicant claims that the General Court should:

- annul the Commission decision bearing reference number Ares (2022) 99942 refusing the request of the Kingdom of the Netherlands for an extension by 4 years in addition to the 8-year period rule for the recovery of unduly paid amounts resulting from the FresQ case, and
- order the Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging that the contested decision is based on an erroneous assumption that the recovery procedure in the FresQ case is not yet finalised.
2. Second plea in law, alleging that the Commission makes an erroneous application of the third subparagraph of Article 54(2) of Regulation No 1306/2013 in so far as it assumes that the exceedance of the 8-year period for the recovery of the unduly paid amounts resulting from the FresQ case is attributable to the Netherlands.

Action brought on 15 March 2022 — HCP v EUIPO — Timm Health Care (PYLOMED)

(Case T-138/22)

(2022/C 198/78)

Language in which the application was lodged: German

Parties

Applicant: HCP GmbH (Hanover, Germany) (represented by: H. Suhren, lawyer)

Defendant: European Union Intellectual Property Office (EUIPO)

Other party to the proceedings before the Board of Appeal: Timm Health Care BV (Borculo, Netherlands)