Reports of Cases

JUDGMENT OF THE COURT (Eighth Chamber)

28 May 2020*

(Appeal — Article 73(1) of the Rules of Procedure of the General Court — Order of the General Court finding an action manifestly inadmissible for lack of a handwritten signature — Paper version of the application including a printed authenticated electronic signature)

In Case C-309/19 P,

APPEAL under Article 56 of the Statute of the Court of Justice of the European Union, brought on 15 April 2019,

Asociación de fabricantes de morcilla de Burgos, established in Villarcayo (Spain), represented by J. Azcárate Olano and E. Almarza Nantes, abogados,

appellant,

the other party to the proceedings being:

European Commission, represented by F. Castillo de la Torre and I. Naglis, acting as Agents,

defendant at first instance,

THE COURT (Eighth Chamber),

composed of L.S. Rossi, President of the Chamber, J. Malenovský (Rapporteur) and F. Biltgen, Judges,

Advocate General: G. Hogan,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 By its appeal, the Asociación de Fabricantes de Morcilla de Burgos (Association of Manufacturers of Black Pudding from Burgos, Spain) is seeking to have set aside the order of the General Court of the European Union of 14 February 2019, *Asociación de Fabricantes de Morcilla de Burgos* v *Commission* (T-709/18, not published, EU:T:2019:107; 'the order under appeal'), by which the General Court

* Language of the case: Spanish.

dismissed as manifestly inadmissible its action for annulment of Commission Regulation (EU) 2018/1214 of 29 August 2018 entering a name in the register of protected designations of origin and protected geographical indications ('Morcilla de Burgos' (PGI)) (OJ 2018 L 224, p. 3; 'the regulation at issue').

The proceedings before the General Court and the order under appeal

2 By application received by fax at the Registry of the General Court on 28 November 2018, the appellant brought an action for annulment of the regulation at issue, accompanied by two additional applications.

3 Since that regulation was published in the *Official Journal of the European Union* on 5 September 2018, the time limit for lodging an action against it expired on 29 November 2018.

4 On 29 November 2018, a paper version of the application was received at the Registry of the General Court, together with various signatures.

5 Pursuant to Article 126 of its Rules of Procedure, the General Court decided to give a ruling by reasoned order, without taking further steps in the proceedings, and dismissed the action as manifestly inadmissible.

6 In paragraphs 10 and 12 of the order under appeal, the General Court first of all recalled that, according to Article 73(1) of its Rules of Procedure in the version applicable to the dispute, 'the original procedural document must bear the handwritten signature of the party's agent or lawyer' and that, in accordance with the case-law of the Court of Justice, failure to comply with that rule cannot be rectified. It then found, in paragraph 15 of that order, that the paper version of the application, which contained the main part of the application and the additional applications, should be regarded as a single procedural document. Finally, it held in paragraphs 16 and 17 of that order, read in conjunction with paragraph 6 thereof, that, since none of the signatures on that procedural document was handwritten given their scanned nature, the action was manifestly inadmissible and did not have to be served on the European Commission.

Forms of order sought by the parties before the Court of Justice

7 By its appeal, the appellant claims that the Court of Justice should:

– declare the appeal admissible;

– set aside the order under appeal in its entirety;

– declare the action brought before the General Court admissible and annul the regulation at issue; and

– order the Commission to pay the costs.

8 The Commission contends that the Court should dismiss the appeal and order the appellant to pay the costs.

The appeal

9 By its sole ground of appeal, the appellant submits that the General Court erred in law by holding, in the order under appeal, that the requirements of Article 73 of its Rules of Procedure, as interpreted by the case-law, had been infringed. It submits, in essence, that that error of law is based on a distortion of the facts by the General Court, which erroneously considered that the application contained scanned signatures, whereas those signatures were in fact qualified electronic signatures which should be treated as handwritten signatures within the meaning of that article.

10 It should be recalled, as follows from the second subparagraph of Article 256(1) TFEU and from the first paragraph of Article 58 of the Statute of the Court of Justice of the European Union, that an appeal lies on points of law only. The General Court thus has exclusive jurisdiction to find and appraise the relevant facts and to assess the evidence. The appraisal of those facts and the assessment of that evidence thus do not, save where the facts or evidence are distorted, constitute points of law subject, as such, to review by the Court of Justice on appeal (judgment of 13 November 2019, *Outsource Professional Services* v *EUIPO*, C-528/18 P, not published, EU:C:2019:961, paragraph 47 and the case-law cited).

11 In that regard, the Court of Justice has already held that such distortion must be obvious from the documents in the Court of Justice's file, without there being any need to carry out a new assessment of the facts and the evidence, and it is for the appellant to indicate precisely the evidence alleged to have been distorted by the General Court and show the errors of appraisal which, in its view, led to that distortion (see, inter alia, judgment of 13 November 2019, *Outsource Professional Services* v *EUIPO*, C-528/18 P, not published, EU:C:2019:961, paragraph 48 and the case-law cited).

12 In the present case, it should be noted that the last page of the original of the application instituting proceedings contains, for each of the two signatory lawyers, an apparently handwritten signature accompanied by a printed statement 'digitally signed on behalf of [name of each lawyer]' as well as an identification code linked to the name of each signatory lawyer, and the date and time at which qualified electronic signatures were purportedly used. Moreover, pages 25 and 26 of the same original also contain a signature that is handwritten in appearance for each of the appellant's lawyers.

13 As regards, in the first place, the apparently handwritten signatures on pages 25 and 26 and on the last page of the application, a physical examination of the original of the application shows that they are scanned images of handwritten signatures, which the appellant does not dispute.

14 As regards, in the second place, the alleged qualified electronic signatures which appear on the last page of the application, it must be held, irrespective of the fact that the appellant's lawyers possess national certificates permitting them to use such signatures, that the original of the application is in paper format and not in electronic format, the information relating to those signatures, although it contains the words 'digitally signed', cannot be considered to be in any electronic form, but must be regarded merely as printed statements like any other printed element of the application.

15 In the third place, contrary to the appellant's contention, the paper original of the application does not contain qualified electronic signatures but is, at best, a paper printout of an electronic document containing the qualified electronic signature of each of the appellant's lawyers.

16 It follows from the three preceding points of this judgment that, for the purposes of verifying, on the basis of Article 73(1) of the Rules of Procedure of the General Court in the version applicable to the present case, whether the original of the application contained handwritten signatures, the General Court could only take into account the signatures appearing to be handwritten on pages 25 and 26 and on the last page of the paper original of the application, which are, as is apparent from paragraph 13 of this judgment, scanned signatures. In those circumstances, the General Court cannot

be criticised for distorting the facts when finding, in paragraph 6 of the order under appeal, that the application did not contain handwritten signatures of the appellant's representatives, but only scanned signatures.

17 Since the original of the application cannot contain qualified electronic signatures, there is no need to examine the appellant's argument based on those signatures being treated as handwritten signatures.

18 Since all the signatures on the original paper version of the application must thus be classified as scanned signatures and since the appellant does not dispute the relevance of the reasoning adopted by the General Court in paragraphs 10 to 16 of the order under appeal in relation to such signatures, the appellant's complaint alleging an error of law committed by the General Court as a result of a distortion of the facts must be dismissed.

19 In addition, as regards, first of all, the appellant's complaint that, for the purposes of lodging the application, the appellant's lawyers complied with the instructions given to them by telephone by the Registry of the General Court, it is sufficient to note that the appellant does not claim that the Registry instructed its lawyers to send, in triplicate, a paper original containing only scanned signatures and printed qualified electronic signatures and that, in so doing, it misled them.

20 Next, as regards the complaint that the requirement of a handwritten signature was, following the entry into force of a new version of the Rules of Procedure of the General Court, repealed with effect from 1 December 2018, that is to say, only two days after the expiry of the period prescribed for bringing the action, it is sufficient to note that the appellant does not dispute that the applicable version of those Rules of Procedure was indeed that which existed prior to the version of 1 December 2018.

21 Finally, in so far as the appellant relies on the principle of retroactivity of the more lenient criminal law, it should be pointed out that, apart from the fact that the present dispute does not fall within a criminal context, the inadmissibility of the application made by the General Court in the order under appeal does not constitute a 'penalty' adopted in respect of the appellant, but is merely the consequence of the appellant's failure to comply with a procedural rule laid down in the Rules of Procedure of the General Court.

22 In the light of the foregoing considerations, the sole ground of appeal relied on by the appellant and, consequently, the appeal must be dismissed.

Costs

23 In accordance with the Article 184(2) of the Rules of Procedure of the Court, where the appeal is unfounded, the Court is to make a decision as to costs. Under Article 138(1) of those rules, applicable to appeal proceedings by virtue of Article 184(1) thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

24 Since the Commission has applied for costs against the appellant and the latter has been unsuccessful, the appellant must be ordered to pay the costs.

On those grounds, the Court (Eighth Chamber) hereby:

1. Dismisses the appeal;

2. Orders the Asociación de fabricantes de morcilla de Burgos to pay the costs.

[Signatures]