

GENERAL COURT

Action brought on 8 July 2011 — Poland v Commission

(Case T-370/11)

(2011/C 290/12)

Language of the case: Polish

Parties

Applicant: Republic of Poland (represented by: M. Szpunar, Undersecretary of State)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

- annul in its entirety Commission Decision 2011/278/EU of 27 April 2011 (notified under document C(2011) 2772) determining transitional Union-wide rules for harmonised free allocation of emission allowances pursuant to Article 10a of Directive 2003/87/EC of the European Parliament and of the Council (OJ 2011 L 130, p. 1);
- order the European Commission to pay the costs.

Pleas in law and main arguments

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

1. First plea in law
 - Infringement of the second subparagraph of Article 194(2) TFEU, in conjunction with Article 192(2)(c) TFEU, by failing to take account of the particular characteristics of individual Member States concerning fuel and by calculating benchmarks on the basis of the reference efficiency of natural gas and taking that fuel as the reference fuel.
2. Second plea in law
 - Infringement of the principle of equal treatment and of Article 191(2) TFEU in conjunction with Article 191(3) TFEU by failing to take account, when drawing up the contested decision, of the diversity of the situations in individual regions of the European Union.
3. Third plea in law
 - Infringement of Article 5(4) TEU (principle of proportionality) by setting the benchmarks in the contested decision at a more restrictive level than attainment of the objectives of Directive 2003/87/EC requires.
4. Fourth plea in law
 - Infringement of Article 10a, in conjunction with Article 1, of Directive 2003/87/EC and lack of competence for the European Commission to adopt the contested measure.

Action brought on 22 July 2011 — Iran Transfo v Council

(Case T-392/11)

(2011/C 290/13)

Language of the case: German

Parties

Applicant: Iran Transfo (Teheran, Iran) (represented by: K. Kleinschmidt, lawyer)

Defendant: Council of the European Union

Form of order sought

The applicant claims that the Court should:

- annul Council Decision 2011/299/CFSP of 23 May 2011 amending Decision 2010/413/CFSP concerning restrictive measures against Iran, in so far as it concerns the applicant;
- adopt a measure of organisation of procedure under Article 64 of the Rules of Procedure of the General Court, requiring the defendant to submit all documents in connection with the contested decision, in so far as they concern the applicant;
- order the defendant to pay the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of rights guaranteed by the Charter of Fundamental Rights of the European Union

The applicant's rights guaranteed by the Charter of Fundamental Rights of the European Union ('the Charter') have been infringed. Article 16 of the Charter guarantees the freedom to conduct a business in the European Union and Article 17 guarantees the right to use and, in particular, to dispose of lawfully acquired possessions in the European Union. Articles 20 and 21 of the Charter guarantee the applicant the right to equal treatment and the right not to be discriminated against.

The applicant is excluded from participation in trade in the European Union by the contested decision. The economic survival of the applicant is thereby threatened. The applicant is dependent on deliveries from the economic territory of the European Union.

There is no public interest in the restriction of the applicant's freedom to conduct a business, its property rights, its right to equal treatment and its right not to be discriminated against. In particular, there is no evidence to justify the defendant's decision and the related interference with the applicant's fundamental rights. The applicant is, in particular, not engaged in proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

2. Second plea in law, alleging manifestly incorrect appraisal of the facts on which the contested decision was based

The applicant is not engaged in proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.

3. Third plea in law, alleging breach of the principle of proportionality

The defendant did not respect the principle of proportionality in its decision. The applicant cannot however exclude the possibility that an energy supplier to whom it delivers sold transformers to the Iranian Atomic Energy Agency, in breach of contract and without its knowledge. The Iranian Atomic Energy Agency could also have easily obtained corresponding transformers on the world market or on the European Union market. The medium voltage transformers at issue are produced and marketed, worldwide, also in Iran, by all important producers. In addition there is extensive worldwide trade in second-hand transformers, which have features corresponding to those transformers produced by the applicant.

4. Fourth plea in law, alleging infringement of the rights of the defence

The statement of reasons set out in Section 16 of the Annex to the contested decision is incomprehensible to the applicant and verifiable reasons were not communicated to the applicant by the defendant, with the result that the applicant's rights of defence and right to a genuine redress have been infringed.

Appeal brought on 25 July 2011 by Yvette Barthel and Others against the order of the Civil Service Tribunal of 10 May 2011 in Case F-59/10 *Barthel and Others v Court of Justice*

(Case T-398/11 P)

(2011/C 290/14)

Language of the case: French

Parties

Appellants: Yvette Barthel (Arlon, Belgium), Marianne Reiffers (Olm, Luxembourg) and Lieven Massez (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis, É. Marchal and D. Abreu Caldas, lawyers)

Other party to the proceedings: Court of Justice of the European Union

Form of order sought by the appellants

— Annulment of the order of 10 May 2011 of the Civil Service Tribunal in Case F-59/10 *Barthel and Others v Court of Justice* dismissing the appellants' action as inadmissible;

— A declaration that the action is admissible;

— Referral of the case back to the CST for judgment on the merits in accordance with law;

— Reservation of the costs.

Pleas in law and main arguments

In support of the appeal, the appellants rely on two grounds of appeal:

1. The first ground of appeal alleges breach of the obligation to state the reasons for its order, on the ground that in dismissing the appellants' action as inadmissible the Civil Service Tribunal infringed Article 296 TFEU and the first sentence of Article 36 of the Statute of the Court of Justice of the European Union, as well as Article 7(1) of Annex 1 thereto, by not examining all the breaches of law alleged before it and by not enabling the appellants to ascertain its grounds for rejecting their pleas in law alleging that it was unlawful to interpret Article 90(2) of the Staff Regulations of officials of the European Union by contrary inference from Article 91 thereof and relying on the right of officials to submit to the appointing authority of their institution a complaint against any act adversely affecting them within, under the second indent of Article 90(2), a period of three months starting on the date of notification of the decision to the person concerned. By failing to refute all the pleas in law and arguments deployed by the appellants in their action for annulment, the Civil Service Tribunal thereby infringed its obligation to state the reasons for its order.

2. The second ground of appeal alleges error of law, on the ground that the Civil Service Tribunal held that the decision of 29 October 2009 rejecting the appellants' request constituted a decision purely confirmatory of a failure to reply which was deemed to be an implied decision rejecting the request, although the lateness of the express decision was explained by the wait for an internal opinion sought from one of the Court of Justice's services to enable it to examine whether the appellants fulfilled the conditions for entitlement to the allowance for shiftwork under Article 56a of the Staff Regulations of officials of the European Union.