

- (a) it failed to show how the disclosure of the names of the delegations would seriously undermine the institution's decision-making process;
- (b) it did not substantiate the risk that the delegations' views would cease to be submitted in writing nor how this would seriously undermine the institution's decision-making process; and in that
- (c) it failed to take into account the overriding public interest in disclosure of the identity of the national delegations.

Second, the applicant submits that the Council violated the duty to state reasons as required by Article 253 EC and Articles 7(1) and 8(1) of Regulation (EC) No 1049/2001.

(¹) Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

Action brought on 16 June 2009 — Nikolaou v Court of Auditors

(Case T-241/09)

(2009/C 205/76)

Language of the case: Greek

Parties

Applicant: Kalliopi Nikolaou (Athens, Greece) (represented by: V. Christianos)

Defendant: Court of Auditors

Form of order sought

The Court is asked to:

- order the Court of Auditors to compensate Mrs Nikolaou for the non-material damage she has suffered by the following means:
 - by issuing a formal communication, cooperating with Mrs Nikolaou as to its content, which will be notified to her as well, to all the Community authorities, in particular to the European Parliament, the European Commission and the other Community institutions and bodies, concerning the fact that Mrs Nikolaou has been cleared of the allegations against her;
 - by issuing a formal communication for publication in those newspapers in Luxembourg, Germany, Greece, France, Spain and Belgium which published negative comments on Mrs Nikolaou, the source of which was

the Court of Auditors, and in the European Voice, concerning the fact that the applicant has been cleared of the allegations against her;

- in the alternative, if the Court of Auditors does not restore Mrs Nikolaou's public image by the above means, order it to pay her the amount of EUR 100 000 as compensation for non-material damage, together with interest from the date of notification to it of her Request for compensation to the date of settlement, which Mrs Nikolaou undertakes to use to ensure the above publication and communications;
- order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the non-material damage she suffered owing to the proceedings before the Luxembourg judicial authorities the amount of EUR 40 000, together with interest from the date of notification to it of her Request for compensation to the date of settlement.
- order the Court of Auditors to pay to Mrs Nikolaou as financial compensation for the financial damage to which she was subjected owing to the proceedings before the Luxembourg judicial authorities, specifically before the Juge d'instruction and the Tribunal d'arrondissement de Luxembourg, the sum of EUR 57 771,40 in respect of the fees of her lawyer, Maître Hoss, for appearing in the above, and the amount of EUR 4 000 in respect of her travelling expenses to appear in the above, more specifically EUR 1 500 to appear before the Juge d'instruction and EUR 2 500 to appear before the Tribunal d'arrondissement de Luxembourg, together with interest on all the above sums from 14 April 2009, the date of notification to the Court of Auditors of her Request for compensation to the date of settlement;
- order the Court of Auditors to pay Mrs Nikolaou's costs in these proceedings.

Pleas in law and main arguments

The applicant maintains that the Court of Auditors flagrantly infringed specific provisions which confer rights on individuals and the fundamental rights which the Court of Auditors should respect in exercising its powers.

First, the applicant maintains that the Court of Auditors flagrantly infringed Article 4 of Regulation No 45/2001, (¹) Article 2 of Decision 99/50 of the Court of Auditors and was in breach of its duty to provide assistance, because it allowed various allegations against Mrs Nikolaou to be leaked to third parties before any formal investigation had been conducted. The Court of Auditors took no steps, in the applicant's view, to prevent those leaks, nor, moreover, at any later point was it concerned to review the allegations and to withdraw them, the result being that significant non-material damage was caused to the applicant.

Secondly, the Court of Auditors flagrantly infringed Articles 2 and 4 of Decision 99/50, the applicant's rights of defence, and the principle of impartiality of the investigation, in conjunction with the principle of sound administration, in its conduct of the preliminary investigation, to the detriment of the applicant. That conduct caused non-material damage and significant financial damage to the applicant, because on the basis of the evidence in the investigation, the applicant was referred to the judicial authorities of Luxembourg and subjected to considerable expense.

Thirdly, the Court of Auditors was in flagrant breach of its duty to provide assistance and the principle of sound administration, because it did not produce evidence to the Luxembourg authorities which it had available and which was of decisive importance for clearing the applicant of the charges against her. The applicant adds that that evidence concerned the question of staff leave in the Court of Auditors and, if it had been transmitted by the latter, would have prevented her referral to the investigating authorities and the Luxembourg criminal court and would have led to restoring her honour and her reputation.

Fourthly, according to the applicant, the Court of Auditors was in flagrant breach of the principle of impartiality and sound administration in deciding to refer the applicant's case to the courts. That conduct caused even greater non-material damage to the applicant.

Fifthly, according to the applicant's arguments, the Court of Auditors was in flagrant breach of its duty to provide assistance in failing to adopt a formal decision clearing the applicant, and omitting to restore Mrs Nikolaou's good name after her acquittal. That omission resulted in doubts persisting as to Mrs Nikolaou's innocence and further non-material damage being caused to her.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1).

**Action brought on 24 June 2009 — Ralf Schröder v CPVO
(Lemon Symphony)**

(Case T -242/09)

(2009/C 205/77)

Language in which the application was lodged: German

Parties

Applicant: Ralf Schröder (Lüdinghausen, Germany) (represented by: T. Leidereiter and W.-A. Schmidt, lawyers)

Defendant: Community Plant Variety Office (CPVO)

Other party to the proceedings before the Board of Appeal of OHIM: Jørn Hansson (Søndersø, Denmark)

Form of order sought

- Annul the decision of the Board of Appeal of CPVO of 23 January 2009;
- Order the defendant to pay the costs.

Pleas in law and main arguments

Community trade mark concerned: Lemon Symphony

Proprietor of the mark or sign cited in the opposition proceedings: Jørn Hansson.

Decision of the Community Plant Variety Office, appealed against before the Board of Appeal: Refusal to annul Community plant variety right of for Lemon Symphony in accordance with Article 20(1)(a) of Council Regulation (EC) No 2100/94 ⁽¹⁾

Appellant before the Board of Appeal: the applicant

Decision of the Board of Appeal: dismissal of the appeal

Pleas in law:

- Infringement of Article 76 of Regulation No 2100/94 and the generally recognised principles of procedure within the meaning of Article 81 of Regulation No 2100/94 insofar as the Board of Appeal ruled in the contested decision without sufficiently investigating the facts of the case;
- Infringement of Article 20(1)(a) and Article 7 of Regulation No 2100/94 insofar as the Board of Appeal apparently wrongly assumed that the applicant could not fulfil the conditions referred to in Article 20(1)(a) and accordingly, failed to appreciate the scope of that provision;
- Infringement of Article 75 of Regulation No 2100/94 insofar as the Board of Appeal based its ruling on grounds on which the applicant did not have an opportunity to express itself before the decision;
- Infringement of Article 63(1) and (2) of Regulation No 1239/95 ⁽²⁾ insofar as the essentials of the oral proceedings were not properly recorded.

⁽¹⁾ Council Regulation (EC) No 2100/94 of 27 July 1994 on Community plant variety rights (OJ 1994 L 227, p. 1).

⁽²⁾ Commission Regulation (EC) No 1239/95 of 31 May 1995 establishing implementing rules for the application of Council Regulation (EC) No 2100/94 as regards proceedings before the Community Plant Variety Office (OJ 1995 L 121, p. 37).