

**Appeal brought on 25 July 2017 by Ori Martin SA against the order of the General Court (Second Chamber) delivered on 1 June 2017 in Case T-797/16 Ori Martin v Court of Justice of the European Union**

**(Case C-463/17 P)**

(2017/C 392/16)

*Language of the case: Italian*

**Parties**

*Appellant:* Ori Martin SA (represented by: G. Belotti, avvocato)

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

**Form of order sought**

- The appellant claims that the Court of Justice of the European Union ('the Court') should, reversing the General Court's order dismissing its action in Case T-797/16 (*Ori Martin spa v Court of Justice of the European Union*), rule that in Cases C-490/15P and C-505/15P (EU:C:2016:678) the Court itself (Sixth Chamber) infringed ORI's right to a fair trial in accordance with Article 47 of the EU Charter of Fundamental Rights ('the Charter') and, consequently, make an order for compensation for damage.

**Pleas in law and main arguments**

The action dismissed by the General Court by the order at issue was based on a single plea in law: infringement by the Court (Sixth Chamber) of Article 47 of the Charter, in particular, infringement of ORI's right to a fair trial. ORI claimed that it is a requirement of this general principle of law that a company that has been definitively penalised should understand what it is alleged specifically to have done, so that, inter alia, it may avoid reoffending. This is not the situation in the present case, ORI still not knowing the actual ground for the order made against it.

The General Court dismissed ORI's action as manifestly devoid of any basis in law, on the assumption that the application for compensation was not based on the excessive duration of the proceedings, which could have constituted a breach of Article 47 of the Charter, but on an alleged illegality vitiating the judgment. The General Court did not rule on the question of whether or not breach of the right to a fair trial, expressly invoked by the applicant, was covered by Article 47 of the Charter or not. In this respect, the issues underlying the present appeal are of interest beyond the present case.

ORI contests the order of the General Court in that the right to a fair trial, here in the form of any person's right to know the grounds for an order made against him, is an inalienable right of the persons on whom penalties are imposed in the field of competition, the essentially penal nature of which is now recognised by settled case-law. The principle of effective judicial protection of an individual's rights is a general principle of EU law stemming from the constitutional traditions common to the Member States; it has been enshrined in Articles 6 and 13 of the European Convention on Human Rights and reiterated in Article 47 of the Charter.

Moreover, ORI emphasises the importance of the question asked, given the personal nature of liability in the field of competition <sup>(1)</sup> as set out in Article 23 of Regulation No 1/2003 EC and given the fact that neither strict liability nor *culpa in vigilando* has any place in EU competition law.

As a result, no one may be penalised without fault or owing to lack of vigilance; no procedural law principle of reversal of the burden of proof can invalidate those conclusions.

<sup>(1)</sup> 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).