

Details of the proceedings before EUIPO

Applicant of the trade mark at issue: Applicant before the General Court

Trade mark at issue: Application for European Union word mark PRIMUS – Application for registration No 14 712 723

Procedure before EUIPO: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of EUIPO of 19 July 2019 in Case R 2528/2018-5

Form of order sought

The applicant claims that the Court should:

- annul the contested decision;
- order EUIPO and, in case it intervenes in writing, the other party to the proceedings before EUIPO to bear its own costs and to compensate the costs incurred by the Plaintiff in the proceeding in front of the General Court and in the appellate proceedings before EUIPO.

Pleas in law

- Infringement of essential procedural requirements, namely the requirement of evidence in terms of legal certainty;
- Infringement of the principle of legitimate expectations;
- Infringement of Article 8(5) of Regulation (EU) 2017/1001 of the European Parliament and of the Council;
- Infringement of Article 7(2)(b) of Delegated Regulation (EU) 2018/625 of the Commission.

Action brought on 1 October 2019 — FG v Parliament

(Case T-670/19)

(2019/C 399/114)

Language of the case: French

Parties

Applicant: FG (represented by: L. Levi and M. Vandenbussche, lawyers)

Defendant: European Parliament

Form of order sought

- Declare the present action admissible and well-founded;

in consequence,

- annul the decision rejecting the applicant's application and the decision to appoint [confidential] ⁽¹⁾ to the post of [confidential];

- in so far as necessary, annul the decision of 21 June 2019 rejecting the claim;
- make good the material harm suffered, as set out in the application;
- award the sum of EUR 10 000 determined *ex aequo et bono* and provisionally as compensation for the non-material harm suffered;
- as measures of organisation of the procedure, order the defendant to produce:
 - the full interview report and the recommendation drawn up by the Advisory Committee;
 - the list of topics discussed by the candidates at the interviews;
 - the list of merit assessment criteria used by the Advisory Committee and, as necessary, the Appointing Authority;
 - the minutes of the deliberations of the Bureau with a view to its recruitment decision;
- order the defendant to pay all the costs.

Pleas in law and main arguments

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

1. First plea in law, alleging infringement of the obligation to state reasons.
2. Second plea in law, alleging that the decision of 16 May 2000 and Article 6 of the recruitment notice are unlawful, in that they disregard the principles of sound administration, legal certainty and non-discrimination and breach Article 27 of the Staff Regulations of Officials of the European Union. In any event, the recruitment procedure following in this case is unlawful on the same grounds.
 - First, the Appointing Authority was not provided with a full opinion of the committee as regards the merits of the candidates when it was called upon to take its appointment decision and, accordingly, to make its choice. That means, next, that those merits were not evaluated, by either the committee or the Appointing Authority, objectively and transparently, on the basis of pre-established criteria *a fortiori* communicated to it.
 - Second, the recommendation accompanying the interview report is not otherwise specified. The committee merely draws up an interview report but the decision of 16 May 2000 does not provide for the committee to carry out a comparison of merits at the time of the interviews. Nor does the decision of 16 May 2000 stipulate that the Bureau, as the Appointing Authority, must lay down criteria for that purpose, particularly as, it appears, it does not have access to the criteria established by the committee, should any exist, which they do not.
 - Third, the decision of 16 May 2000 does not stipulate that all candidates' files are to be available to the Appointing Authority. Although the defendant asserts that the members of the Bureau had available to them the personal files of the candidates, it does not claim that those members actually consulted those files and, in particular, that of the applicant.
 - Fourth, the decision of 16 May 2000 does not provide for communication to the candidates of the criteria laid down by the committee and the Appointing Authority for the purposes of their work of examination and comparison of the merits.
3. Third plea in law, alleging a manifest error of assessment and disregard of the interests of the service. The applicant submits in that regard that, by appointing [confidential] to the post of [confidential], the Appointing Authority made a manifest error of assessment relating both to compliance with the conditions of the vacancy notice and the recruitment notice and to a comparison of the respective merits of [confidential] and of the applicant. In the same way, the Appointing Authority manifestly disregarded the interests of the service.
4. Fourth plea in law, alleging infringement of the rules of objectivity and impartiality and of Article 41 of the Charter of Fundamental Rights of the European Union, and misuse of powers, which vitiate the contested decisions.
5. Fifth plea in law, alleging breach of the duty of care.

(¹) Confidential data redacted.