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A BRIEF PEDAGOGICAL JUDGMENT ON ISSUES RELATING TO THE ADMISSIBILITY OF ACTIONS FOR ANNULMENT

Una breve sentenza pedagogica sulle questioni relative alla ricevibilità dei ricorsi di annullamento

Un arrêt pédagogique sur les questions relatives à la recevabilité des recours en annulation

ECJ, 30 January 2025, case C-586/23 P, *Frajese c. Commission*

MARIA EFTHYMIOU
(Judge in the Court of First Instance, Athens)

In a recent judgment, the Court of Justice of the European Union ('the Court'), sitting in a three-judge format, addressed some interesting procedural issues, largely confirming its previous case-law in that regard[1]. The case raised out of an action for annulment brought before the General Court by an Italian doctor, against two Commission implementing decisions relating to the grant of a marketing authorisation for medicinal products (vaccines) for human use against the Covid-19 disease. On appeal from the General Court, the Court dismissed the appeal and upheld the order at first instance, by which the action had been dismissed as inadmissible on the ground of the applicant's lack of interest in bringing proceedings and standing.

The significance of the commented judgment lies in the fact that, in relatively few pages, it provides a succinct but relevant solution to various procedural issues that arose in the course of the first-instance proceedings. In its appeal, the applicant put forward four grounds of appeal against the challenged order: (1) lack of independence of the reporting judge before the General Court; (2) inadmissibility of the submission of observations by the Commission for being out of time; (3) failure to state reasons and contradictory reasoning as well as an error of law concerning his lack of interest in and standing to bring proceedings; and (4) infringement of the right to effective judicial protection.

[1] ECJ, 30 January 2025, case C-586/23 P, *Frajese c. Commission,* ECLI:EU:C:2025:45.

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By his first ground of appeal, the applicant challenged the validity of the order under appeal in so far as the reporting judge of the General Court had, in his past capacity, exercised various functions within the Commission between 1996 and 2019. He submitted that the independence and impartiality of the General Court's panel hearing the case were affected by the long career of that judge within that institution, and by the prospect of his returning to his career in that institution after the end of his term as a judge. However, consistently with its previous case law concerning the principle of judicial independence and impartiality, the Court rejected the applicant's arguments. In particular, the Court found that the applicant had failed (i) to request, before the General Court, the exclusion of the reporting judge, in accordance with the first and fourth paragraphs of Article 18 of the Statute of the Court of Justice of the European Union, (ii) to rely on any of the grounds for exception provided for in the first paragraph of Article 18 of the Statute, and (iii) to adduce any evidence in support of its (in fact, vague) allegations.

With regard then to the second ground, the Court – 'pedagogically' explaining how to procedural deadlines are to be calculated – held that the plea of inadmissibility introduced by the Commission had not been submitted out of time.

As far as the third ground is concerned, the Court confirmed that the applicant had not duly proven an interest in bringing proceedings. The main reasoning lies in the fact that the contested decisions only prohibited Member States from opposing the placing on the market of the vaccines at issue, but they did not create any obligation for doctors to prescribe and administer those vaccines to their patients or conferred on them the responsibility, or even an obligation, to carry out checks on their safety and efficacy. Indeed, the safety and efficacy control of medicinal products is – the Court notes – carried out by the European Medicines Agency, on the basis of which the decisions at issue were based in the present case. In that regard, it may worth to recall that the prerequisite of 'interest to bring proceedings' for the admissibility of an action for annulment is not expressly set out in the Treaties, but constitutes a general principle of EU procedural law and may also be found in the Member States' judicial systems.

In addition, for reasons of completeness, the Court considered it appropriate also to examine the appellant's standing to bring an action for annulment. On the basis of settled case-law, the Court emphasised that challenged measure should directly affect the applicant's position. However, in the present case the Court found that the applicant was not directly concerned by the contested decisions which in no way brought out a distinct change in his legal position. Indeed, those decisions did not impose

any obligation on him or, for that matters, on any doctor, to administer the vaccines at issue to their patients or to monitor the vaccines' safety and efficacy. The Court added that, even assuming that there was an obligation for doctors to administer those vaccines under Italian or EU law, such an obligation does not follow from those decisions, but from the adoption of other measures, either at national level or at EU level. Lastly on this point, it should be noted that, in concluding that the applicant was not directly concerned by the contested decisions, the Court refrained from examining whether the applicant was also individually concerned by the contested decisions, an issue which the General Court had dealt with. In this context, the Court also rejected the applicant's argument that the national authorities had no discretion in the centralised procedure for the purchase of vaccines, since the decisions at issue did not concern the purchase of the vaccines, but the marketing authorisations, issued to two pharmaceutical companies.

The Court's findings are, naturally, neither original nor surprising. The (overly?) restrictive interpretation of the concept of 'direct concern' has been the object of intense scholar debate. True, there have been judgments in which the Court adopted a rather sensible approach to this issue[2]. However, at the same time, the Court has, in other cases, made a rather narrow application of that concept, disregarding the invitations of, for example, Advocate General Bobek to adopt a more open approach, especially when the applicants are Member States' regional and local authorities[3].

Finally, the Court rejected the applicant's fourth plea alleging the ineffectiveness of the judicial protection on the ground that national courts could not, under Article 267 TFEU, be obliged to make a preliminary reference concerning the validity of acts of the Commission. The Court rejected the applicant's arguments, recalling its settled case-law concerning the obligation for national courts or tribunals of last instance to make a reference to the Court where they consider that there are one or more grounds for the invalidity of an EU act[4]. In addition, the Court also referred to the possibility for the applicant, when the relevant conditions are

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[2] See, for example, judgments in ECJ, 6 November 2018, Cases C-622/16 P to C-624/16 P, *Scuola Elementare Montessori v Commission etc.*, ECLI:EU:C:2018:873 and in 12 July 222, Case C-348/20 P, *Nord Stream 2 v Parliament and Council,* ECLI:EU:C:2022:548.

[3] Opinion of Advocate General Bobek, 16 July 2020, Case C-352/19 P, *Région de Bruxelles - Capital v Commission,* ECLI:EU:C:2020:588; 10 June 2021, Case C-177/19 P, *Germany - Ville de Paris and Others v Commission*, ECLI:EU:C:2021:476.

[4] On these issues, see the judgments of the Grand Chamber of the Court in 6 October 2021, Case C-561/19, *Consorzio Italian Management,* ECLI:EU:C:2021:799; 15 October 2024, Case C-144/23, *Kubera,* ECLI:EU:C:2024:881; as well as the pending Case C-

satisfied, to bring an action for damages against the State before the national courts, and to the possibility for the Commission (or the other Member States) to bring infringement proceedings under Articles 258 to 260 TFEU before the Court against the defaulting Member State.

767/23, *Remling*.