— Order that a new medical committee be set up, with the task of reviewing the appellant's case;

— Order the Commission to pay the costs.

**Pleas in law and main arguments**

The present appeal is brought against the judgment dismissing an action seeking, in essence, annulment of the decision by which the appointing authority concluded the procedure initiated for the purpose of Article 73 of the Staff Rules of Officials of the European Union by finding that the appellant did not suffer physical or mental impairments as a result of an attack on the appellant.

The appellant relies on two grounds of appeal.

1. The first ground of appeal, alleging breach of the third paragraph of Article 22 of the Rules on Insurance.

   It is submitted in this regard that, contrary to the requirements of those rules, the medical committee did not reach its decision as a collegiate body and, when it encountered a legal problem, failed to declare that it lacked competence.

2. Second ground of appeal, alleging breach of Article 73 of the European reference schedule for the assessment of physical and mental impairments for medical purposes.

   According to the appellant, by the judgment under appeal, the Civil Service Tribunal dismissed the action without providing the specific interpretation sought as to whether the Common Rules in question cover the entire cutaneous system, or only deep cutaneous burns and pathological cutaneous scarring.

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## Appeal brought on 14 February 2013 by Diana Grazyte against the judgment of the Civil Service Tribunal of 5 December 2012 in Case F-76/11 Grazyte v Commission

**(Case T-86/13 P)**

(2013/C 101/59)

*Language of the case: Italian*

**Parties**

*Appellant:* Diana Grazyte (Utena, Lithuania) (represented by R. Guarino, lawyer)

*Other party to the proceedings:* European Commission

**Form of order sought by the appellant**

The appellant claims that the Court should:

— Set aside the judgment of the Civil Service Tribunal of 5 December 2012 in Case F-76/11 *Grazyte* v *Commission*;

— Annul the decision of the Director of DG HR D, acting as the authority responsible for concluding contracts of employment, of 29 April 2011 and, as a consequence, declare that the appellant is entitled to the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations of Officials of the European Communities;

— In the alternative, refer the case back to the Civil Service Tribunal for a decision;

— Order the defendant to pay the costs of the proceedings at first instance and the appeal proceedings.

**Pleas in law and main arguments**

The appellant relies on three grounds of appeal.

1. First ground of appeal, alleging breach and/or misinterpretation of Community law with regard to the rules on the interpretation of law and the rationale of Article 4 of Annex VII to the Staff Regulations, and failure to state reasons.

   — It is submitted in this regard that both the wording of the provision in question (which refers to 'reasons other than the performance of duties in the service of a State or of an international organisation') and the rationale of that provision have the effect of excluding from the allowance any person who has left his country of origin without establishing a lasting tie with the country to which he has moved precisely because he was employed by an international organisation. It is not possible, on the basis of the wording, the logic or indeed the rationale of that provision, to arrive at the conclusion, as did the Tribunal in the judgment under appeal, that periods following employment in the service of an international organisation are to be disregarded when the move occurred, as in the present case, for personal reasons.

2. Second ground of appeal, alleging breach and/or misinterpretation of Community law with regard to the classification of Agencies as international organisations for the purpose of Article 4 of Annex VII to the Staff Rules.

— It is submitted in this regard that an 'international organisation' for the purpose of Article 4 of Annex VII to the Staff Regulations has been defined with great precision by the case-law. Thus, in its judgment of 30 November 2006 in *J* v *Commission* (in particular paragraphs 42-43), the General Court of the European Union considered that, in order for an organisation to be classified as international for the purpose of the application of Article 4(1)(a) of Annex VII to the Staff Regulations, it is necessary for it to be formally identified and recognised as such by the other States or by other international organisations created by the States. In any event, for the purpose of determining whether an organisation is an international organisation, regard must be had only to its own composition, not whether it is a member of organisations with an international composition. In the light of those strict criteria, neither the EFSA nor the ETF may be regarded as international organisations within the meaning of Article 4.

3. Third ground of appeal, alleging breach of the principle of equal treatment.

— It is submitted that the interpretation given to the provision in question by the court at first instance is illogical and has the effect of giving rise to discrimination between two categories of officials, for which this is no objective basis, by treating the position of a person who has been outside his country of origin simply because he was performing duties in the service of a State or an international organisation (thus not severing contact with his home country) in the same way as that of a person who has left his country of origin for personal reasons, leading to a severing of links with that country, and only subsequently worked for a State or an international organisation. Moreover, according to the judgment under appeal, the situation of two officials who left their respective countries of origin more than ten years ago to raise a new family abroad are to be treated differently simply because one of those individuals, after living in the new country for many years, was employed by an international organisation.

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## Action brought on 14 February 2013 — Aer Lingus v Commission

**(Case T-101/13)**

(2013/C 101/60)

*Language of the case: English*

### Parties

*Applicant:* Aer Lingus Ltd (Dublin, Ireland) (represented by: D. Piccinin, Barrister, and A. Burnside, Solicitor)

*Defendant:* European Commission

### Form of order sought

The applicant claims that the Court should:

— Annul the decision of the European Commission dated 14 November 2012, taken under clause 1.4.9 of the Commitments given by International Consolidated Airlines Group ('IAG') to the Commission as a condition for the Commission's approval of IAG's acquisition of British Midlands Limited ('bmi') under Council Regulation 139/2004 [1], evaluating bids for take-off and landing slots at Heathrow Airport that IAG was required to divest under the Commitments, and ranking the bid submitted Virgin Atlantic Airways ('Virgin') for slots for the London Heathrow — Edinburgh route above the bid submitted by Aer Lingus Limited ('Aer Lingus') for those slots;

— Order that the Commission should pay the applicant's costs.

### Pleas in law and main arguments

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

1. First plea in law, alleging an error in the interpretation of the Commitments. The applicant argues that the Commission erred in its interpretation of the criterion for evaluating the bids set out in clause 1.4.10(c) of the Commitments, concerning the bidding airline's plans to offer feed to third party carriers. The Commission interpreted that criterion as encompassing Virgin's plans to carry passengers on the London Heathrow — Edinburgh route on its own connecting flights to long haul origins/destinations, whereas that criterion is in fact limited to the provision of connecting passengers to third party carriers.

2. Second plea in law, alleging failure to take appropriate account of advice from the Monitoring Trustee [2]. The applicant argues that the Commission failed in its duty to take appropriate account of advice from the Monitoring Trustee, and/or to give adequate reasons for departing from that advice in four respects:

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on Aer Lingus' advantages in respect of interlining;

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on Aer Lingus' advantages in respect of operating costs and sensitivity analysis;

— The Commission failed to take due account of or give reasons for departing from the Monitoring Trustee's advice on how the various measures should be analysed in combination to produce an overall ranking; and