

Pleas in law and main arguments

By the judgment of 14 December 2006 which the appellant now seeks to have set aside, the Civil Service Tribunal (CST) annulled the Commission's decision of 23 December 2004 appointing another candidate to a post as Head of Unit and, consequently, rejecting the applicant's candidature.

In support of its application to have that judgment set aside, the Commission raises three pleas in law, the first of which alleges incorrect application of the *Kratz* ⁽¹⁾ decision in the present case in so far as the new rules applicable, including the relevant provisions of the Staff Regulations and the Commission's 'Middle Management' decision ⁽²⁾, are different from those which were applicable in *Kratz*, a consideration which the Tribunal failed to take into account.

The second plea put forward by the Commission alleges a contradiction in the grounds of the judgment under appeal, in that the Tribunal found, first of all, that the principle of separation of functions and grade was relevant, that the post could be filled solely by transfer, the grade being automatically that of the candidate chosen on the date of appointment, whereas it then concluded that posts must be published by pairs of two grades.

Third, the Commission contends that if the obligation to publish posts as Head of Unit according to specific pairs of grades, as imposed on the institutions by the judgment under appeal, were to be upheld, the applicant at first instance would not have an interest in bringing proceedings and his action ought therefore to be dismissed as inadmissible. In the Commission's submission, the judgment under appeal thus exceeds the subject-matter of the application at first instance.

⁽¹⁾ Case T-10/94 *Kratz v Commission* [1995] ECR II-1455.

⁽²⁾ Commission Decision C (2004) 1597 of 28 April 2004 relating to the middle management, published in *Administrative Notices* No 73/2004 of 23 June 2004.

Action brought on 26 February 2007 — E.ON Ruhrgas and E.ON Földgáz Trade v Commission

(Case T-57/07)

(2007/C 95/95)

Language of the case: English

Parties

Applicants: E.ON Ruhrgas International AG (Essen, Germany) and E.ON Földgáz Trade Zrt. (Budapest, Hungary) (represented by: G. Wiedemann and T. Lübbig, lawyers)

Defendant: Commission of the European Communities

Form of order sought

- Annul the 4 paragraph at the bottom of page 1 of the decision by the European Commission (document No *30783) dated 19 December 2006 and directed to E.ON Ruhrgas International AG in Case M.3696 — E.ON/MOL; and annul the decision by the European Commission (document No *924) dated 16 January 2007 and also directed to E.ON Ruhrgas International AG in Case M.3696 — E.ON/MOL;
- order the Commission to pay the costs incurred by the applicants in the present proceedings.

Pleas in law and main arguments

By decision of 21 December 2005 the Commission declared, subject to the applicant's compliance with certain conditions and obligations, the acquisition of two Hungarian gas companies by the applicant E.ON Ruhrgas International AG compatible with the common market and the functioning of the Agreement on the European Economic Area.

As one of the obligations, the applicant E.ON Ruhrgas International AG undertook to organise and implement a gas release programme on the Hungarian market. The initial auction price was to be set at 95 % of the weighted average cost of gas provided that the aggregate loss the applicants may incur as a result of the final auction price being set below the weighted average cost of gas does not exceed EUR 26 million.

In the contested letters the Commission indicated that the losses made by the applicants in a given auction should be offset by any profits made by the applicants in other auctions. The applicants contest this and are of the opinion that losses which results from the gas release auctions do not need to be offset by potential profits that may derive from future auctions.

In support of their application, the applicants invoke two pleas in law.

Firstly, the applicants submit that the Commission has no legal basis for increasing the financial burdens and thereby subsequently change the legal obligations resulting from the Commission's decision of 21 December 2005.

Secondly, the applicants contend that the Rules of procedure of the Commission ⁽¹⁾ have been infringed in that neither have all the members of the Commission deliberated on the content of the two contested letters, nor has there been a proper delegation of powers to the Directorate General of the Commission by virtue of Article 14 of the said rules.

⁽¹⁾ OJ 2000 L 308, p. 26, as amended.