

Form of order sought by the appellant

- annul the judgment of the Civil Service Tribunal of 9 December 2008 in Case F-52/05 in so far as it upholds the second plea alleging the unlawfulness of the implicit rejection of a distancing measure and the claims for compensation in connection with the distancing measure and disregard for the duty to have regard for the welfare of officials;
- dismiss the action brought by Q before the Civil Service Tribunal in Case F-52/05 in so far as it was upheld by that tribunal;
- make the appropriate order as to the costs of the proceedings before the Civil Service Tribunal and of the appeal;
- in the alternative,
 - annul the judgment of the Civil Service Tribunal of 9 December 2008 in Case F-52/05;
 - refer the case back to the Civil Service Tribunal;
 - reserve the costs.

Pleas in law and main arguments

By the present appeal, the Commission seeks the annulment of the judgment of the Civil Service Tribunal (the Tribunal) of 9 December 2008 given in Case F-52/05 Q v *Commission* by which the Tribunal annulled the Commission's decision rejecting the request for assistance made by Q concerning alleged psychological harassment, in so far as provisional distancing measures had not been taken, and ordered the Commission to pay to Q the sum of EUR 18 000 in damages.

In support of its appeal, the Commission relies on two grounds of appeal alleging:

- that the Tribunal erred in law in holding that 'a degree of failing in the duty to have regard for the welfare of officials' constituted unlawful conduct giving rise to non-contractual liability on the part of the Community in so far as (i) the infringement of the duty to have regard for the welfare of

the official in this case is not sufficiently serious to give rise to non-contractual liability on the part of the Community and (ii) the Tribunal held that there had been infringement of that duty to have regard for the welfare of the official in this case even though there had been no psychological harassment within the meaning of Article 12a of the Staff Regulations of Officials of the European Communities;

- that the Tribunal erred in law in holding that the implicit refusal of a distancing measure gives rise to tortious liability on the part of the Commission in so far as the Tribunal failed to establish that there had been a sufficiently serious infringement of a rule of law intended to confer rights on individuals.

Action brought on 20 February 2009 — Dennekamp v Parlement**(Case T-82/09)**

(2009/C 102/44)

*Language of the case: English***Parties**

Applicant: G. -J. Dennekamp (Giethoorn, Netherlands) (represented by: O. Brouwer and A. Stoffer, lawyers)

Defendant: European Parliament

Form of order sought

- annul the contested decision;
- order the Parliament to pay the applicant's costs pursuant to Article 87 of the Rules of Procedure of the Court of First Instance, including the costs of any intervening parties and costs relating to the request for an expedited procedure.

Pleas in law and main arguments

On 20 October 2008, the applicant requested the European Parliament, on the basis of Regulation (EC) No 1049/2001⁽¹⁾, to grant access to it to (i) all documents showing which Members of Parliament (MEPs) are also members of the Additional Pension Scheme, (ii) a list of names of the MEPs that were members of the Additional Pension Scheme on 1 September 2005 and (iii) a list of names of the present members of the Additional Pension Scheme for whom the Parliament pays a monthly contribution. The Parliament rejected the applicant's request and confirmed its refusal in its decision of 17 December 2008.

By means of the present application, the applicant seeks the annulment of Decision A(2008)22050, of 17 December 2008, of the European Parliament concerning the refusal of access to documents which the applicant requested on the basis of Regulation (EC) no 1049/2001.

The applicant claims that the refusal is based on an error of assessment and constitutes a manifest breach of the rules and principles regarding access to documents contained in Regulation (EC) No 1049/2001 and of the rules laid down in Regulation (EC) No 45/2001⁽²⁾. As a result, the Parliament has infringed the applicant's right of access to documents of Community institutions as laid down in Article 255 EC, Article 42 of the Charter of Fundamental Rights of the European Union and Regulation (EC) No 1049/2001.

In support of its application, the applicant submits that the decision is vitiated by the following errors of law and of assessment.

- (a) According to the applicant, the Parliament infringed Article 2(1) of Regulation (EC) No 1049/2001 and erroneously based its refusal on Article 4(1)(b) of the aforementioned Regulation, as disclosure of the requested documents is not capable of undermining the private lives of the MEPs concerned.
- (b) In addition, the Parliament allegedly misapplied Regulation (EC) No 45/2001, as it erroneously found that the applicant's request should be assessed under Regulation (EC) No 45/2001.
- (c) Moreover, the applicant submits that the Parliament failed to establish a fair balance between the public interests served by disclosure and the private interests allegedly affected. It

also failed to assess to what extent the alleged private interests would be actually and specifically undermined.

- (d) The Parliament infringed, according to the applicant, Article 235 EC as it has not provided adequate reasons for its refusal. Finally, it is submitted that the decision does not show that the Parliament has carried out a concrete assessment per individual documents referred to the applicant's request for access.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43)

⁽²⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ 2001 L 8, p. 1)

Action brought on 27 February 2009 — Idromacchine and Others v Commission

(Case T-88/09)

(2009/C 102/45)

Language of the case: Italian

Parties

Applicants: Idromacchine Srl (Porto Marghera, Italy), Alessandro Capuzzo (Mirano, Italy), Roberto Capuzzo (Mogliano Veneto, Italy) (represented by: W. Viscardini and G. Donà, lawyers)

Defendant: Commission of the European Communities

Form of order sought

(A) Order the Commission of the European Communities:

- (1) as regards material damage, to pay to Idromacchine Srl the sum of EUR 5 459 641,28 (or other such sum as the Court may determine);