

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);

(2) as regards non-material damage:

- to pay to Idromacchine Srl such sum as the Court shall deem fair and equitable – equivalent, it is suggested, to a significant percentage (for example, between 30 % and 50 %) of the sum paid in respect of material damage;
- to pay to Mr Alessandro Capuzzo and to Mr Roberto Capuzzo, individually, such sum as the Court shall deem fair and equitable, equivalent, it is suggested, also to a significant percentage (for example, between 30 % and 50 %) of the sum paid in respect of material damage;

(3) to restore the reputation of Idromacchine Srl, Mr Alessandro Capuzzo and Mr Roberto Capuzzo — by such means as the Court shall consider most appropriate (for example, by way of an *ad hoc* publication in the *Official Journal* and/or a letter addressed to the principal customers in the reference sector — by correcting the information concerning the applicants which appeared in the *Official Journal of the European Union* of 18 February 2005, series C 42, page 15 et seq;

(B) Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicants submit that the publication by the Commission of the name of Idromacchine Srl — a third party vis-à-vis the formal addressee of Commission Decision C(2004) 5426 final of 30 December 2004, published in the *Official Journal of the European Union* of 18 February 2005, series C 42, page 15 et seq — and of detrimental information relating to that company constitutes a serious breach of numerous principles of Community law and they therefore seek compensation for the very significant material and non-material damage suffered as a result.

In particular, by publishing the information in question without ensuring the necessary safeguards, the most important of which would have been to afford the applicants a prior opportunity to be heard, the Commission failed in its duties of diligence and infringed the principles of the safeguarding of the rights of defence and of professional confidentiality.

In any event, given that the published decision is not addressed to Idromacchine Srl, the publication of information concerning that company must be regarded as disproportionate in terms of the objective pursued by the Commission, which was limited to publishing information relating to the application of Community competition rules.

As regards the damage incurred, the publication of information in the manner set out above has had the effect of reducing Idromacchine Srl's turnover to zero in the sector in which it operates and has seriously damaged the reputation of the company and the persons who represent it.

Action brought on 27 February 2009 — Mojo Concerts and Amsterdam Music Dome Exploitatie v Commission of the European Communities

(Case T-90/09)

(2009/C 102/46)

Language of the case: Dutch

Parties

Applicants: Mojo Concerts BV (Delft, Netherlands) and Amsterdam Music Dome Exploitatie BV (Delft, Netherlands) (represented by S. Beeston, Lawyer)

Defendant: Commission of the European Communities

Form of order sought

- Annul the contested decision;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicants seek the annulment of the Commission Decision of 21 October 2008 on the investment of the municipality of Rotterdam in the Ahoy complex (State aid C 4/2008 (ex N 97/2007, ex CP 91/2007).