

(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)).

They submit that the Commission's reasoning in the contested decision discloses a manifestly incorrect assessment and that the steps in the reasoning are incorrect and/or inadequately substantiated.

First, the applicants argue that the value of the rent and of the shares in Ahoy which have been established are not in accordance with market value. Furthermore, an investment which only leads to value retention can indeed produce an advantage. Moreover, when determining the value of the rent and of the shares, no account was taken of the investment. According to the applicants, the contractual restrictions between the municipality and the operator would not prevent the investment from producing added value. Finally, the benefit-sharing arrangement does not provide an additional guarantee of the market conformity of the transactions.

The applicants also allege breach of procedure and defective reasoning: the arguments submitted by them were not, or only inadequately, taken into consideration by the Commission in the contested decision; parts of the file were wrongly classified as confidential; and the applicants were not informed of all the elements in the file, which constitutes an infringement of the right to be heard.

- set aside the judgment delivered on 15 December 2008 by the European Civil Service Tribunal in Case F-34/07;
- allow the pleadings seeking the setting aside of that judgment and compensation submitted by the applicant before the Civil Service Tribunal;
- order the Commission to pay the costs of both instances.

#### **Pleas in law and main arguments**

By the present appeal, the appellant seeks the setting aside of the judgment of the Civil Service Tribunal (CST) of 15 December 2008 delivered in Case F-34/07 *Skareby v Commission* dismissing the action by which the appellant sought, firstly, annulment of her career development report for 2005 and, secondly, damages.

In support of her appeal, the appellant raises three pleas alleging an error of legal characterisation of the facts, a failure correctly to apply Article 5 of the general implementing provisions and Article 43 of the Staff Regulations of officials of the European Communities and a failure to state reasons, since the CST ruled that it could not be said that the Commission had not carried out an assessment of the appellant for the period from January to September 2005, despite the fact that the appellant's career development report for 2005 was, almost word for word, merely a virtually identical copy of the appellant's career development report for 2004.

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**Appeal brought on 2 March 2009 by Carina Skareby against the judgment of the Civil Service Tribunal delivered on 15 December 2008 in Case F-34/07, Skareby v Commission**

**(Case T-91/09 P)**

(2009/C 102/47)

*Language of the case: French*

#### **Parties**

*Appellant:* Carina Skareby (Leuven, Belgium) (represented by S. Rodrigues and C. Bernard-Glanz, lawyers)

*Other party to the proceedings:* Commission of the European Communities

#### **Form of order sought by the appellant**

- Declare the appeal admissible;

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**Action brought on 26 February 2009 — United Phosphorus v Commission**

**(Case T-95/09)**

(2009/C 102/48)

*Language of the case: English*

#### **Parties**

*Applicant:* United Phosphorus (Warrington, United Kingdom) (represented by: C. Mereu and K. Van Maldegem, lawyers)