

**Action brought on 31 October 2007 — Menidiatis v Commission**

(Case F-128/07)

(2008/C 8/56)

*Language of the case: French***Parties***Applicant:* Andreas Menidiatis (Sint-Genesius-Rode, Belgium) (represented by: S. Pappas, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- annul the Commission decision of 21 December 2006 rejecting the applicant's candidature for the vacant post of head of representation of the Commission to Greece and appointing another candidate to that post;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

In support of his action, the applicant relies on a number of pleas in law against the decision to reject his candidature for the vacant post of head of representation of the Commission to Greece. First, he pleads that the selection procedure was unlawful and not complied with. Secondly, he pleads that the notice of vacancy was unlawful and not complied with.

A further plea in law alleges infringement of Article 11a of the Staff Regulations. Moreover, the applicant pleads the unlawfulness of the downgrading of the post of head of representation in Athens and the unlawfulness of the decision of 7 July 2004 concerning the detailed rules for filling head-of-representation posts.

In addition, the lateness of the publication of the notice of vacancy is relied on along with the failure to state reasons for refusing access to the documents requested by the applicant in his complaint. Finally, the applicant relies on the breach of the rules concerning the rotation of staff occupying 'sensitive posts' and submits that there are numerous factors indicating a misuse of powers.

**Action brought on 31 October 2007 — Kremlis v Commission**

(Case F-129/07)

(2008/C 8/57)

*Language of the case: French***Parties***Applicant:* Georges-Stavros Kremlis (Brussels, Belgium) (represented by: S. Pappas, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- annul the Commission decision of 21 December 2006, rejecting the applicant's candidature for the vacant post of head of representation of the Commission to Greece and appointing another candidate to that post;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant relies on very similar pleas in law to those relied on in Case F-128/07, the notice of which is published in this issue of the *Official Journal of the European Union*.

**Action brought on 31 October 2007 — Vinci v European Central Bank**

(Case F-130/07)

(2008/C 8/58)

*Language of the case: German***Parties***Applicant:* Fiorella Vinci (Schöneck, Germany) (represented by: B. Karthaus, lawyer)*Defendant:* European Central Bank

**Form of order sought**

- Find that the inclusion of the defendant's letter of 5 March 2007 (07) 139a H KK7bk HEAL and of the letter of 5 March 2007 (07) 139b H KK/bk HEAL, and the storage of the 'medical certificate' of Dr Schön of 24 April 2007 in the personal file, and the inclusion of the result of the examination of the Deutsche Klinik für Diagnostik concerning the applicant's state of health of 2 April 2007 in the medical file, is unlawful;
- Find that the defendant's decision of 3 September 2007 (07) 772 PSR JMC/cc APPE, by which it refuses to delete the personal data contained in the documents referred to under point 1 above, is unlawful;
- Find that the defendant's order of 5 March 2007 to submit to a medical examination, lacks legal effect;
- Order the defendant to pay the applicant EUR 10 000;
- Order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant seeks first an order finding that the inclusion of the documents referred to in that application in her personal file and in the separately kept medical file is unlawful. Second, the applicant seeks a finding that the refusal of the defendant to delete the illegally obtained personal data is unlawful. In its

reasoning, the applicant claims that Staff Rule 5.13.4 of the European Central Bank (ECB), which does not provide a basis for the processing of the categories of personal data referred to in Article 10 of Regulation No 45/2001 of the Council and of the European Parliament of 18 December 2002 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 ('Regulation No 45/2001'), and which, contrary to Article 10(2)(b) of Regulation No 45/2001, does not lay down any objective which would make processing necessary, precludes the obtaining and storage of the medical data.

Thirdly, the applicant seeks an order annulling the Commission's decision of 5 March 2007 by which the applicant was ordered to undergo a medical examination. The applicant derives the nullity from the objection of abuse of discretion and from the failure to observe the essential procedural rules which are contained in Staff Rule 5.13.4. That rule provides that it is only the 'Medical Adviser' established at the ECB who is entitled to order further measures of a medical nature such as examinations, and not the applicant's direct superior.

Furthermore, the applicant claims compensation for non-material damage which she suffered as a result of having to undergo a full medical examination for which there was no adequate legal basis.

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