arbitration clause contained in a contract concluded by or on behalf of the Community, to Article 5(1) of Regulation (EC) No 1406/2002 providing that the Agency shall be a body of the Community, and to Article 225 EC providing that the Court of Fist Instance shall have jurisdiction to hear and determine at first instance actions or proceedings referred to in Article 238 EC.

Moreover, the applicant submits that it seeks confirmation by the Court that the Seat Agreement is an instrument of international law within the sphere of Community law that binds the Portuguese authorities and that cannot be unilaterally modified. It further applies for a judgment concluding that the processing of applications for motor vehicle registrations by its staff members is in contradiction to the provisions of the Protocol and that the Portuguese authorities are obliged to implement the relevant provisions of the Protocol within a reasonable period of time. Finally, it claims that the Seat Agreement shall not be interpreted in a way that the staff of the EMSA does not enjoy at least the rights, with regards to vehicle registration, of any EU national transferring its residence to Portugal.

(1) Regulation (EC) No 1406/2002 of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency (OJ 2002 L 208, p. 1).

(2) Published in the Portuguese Official Journal No 224 of 22 September 2004, p. 6073, available on the EMSA's website http://www.emsa.europa.eu/Docs/legis/protocol%20pt%20government%20and%20emsa.pdf

Appeal brought on 5 May 2008 by the Commission of the European Communities against the judgment of the Civil Service Tribunal delivered on 21 February 2008 in Case F-31/07, *Putterie-De-Beukelaer* v *Commission*

(Case T-160/08 P)

(2008/C 183/45)

Language of the case: French

Parties

Appellant: Commission of the European Communities (represented by: C. Berardis-Kayser and K. Herrmann, Agents)

Other party to the proceedings: Françoise Putterie-De-Beukelaer (Brussels, Belgium)

Form of order sought by the appellant

— set aside the judgement under appeal;

— refer the case back to the CST;

— reserve the costs.

Pleas in law and main arguments

By this appeal, the Commission requests that the judgment of the Civil Service Tribunal (CST) of 21 February 2008 in Case F-31/07 *Putterie-De-Beukelaer* v *Commission*, in which the CST annulled Ms Putterie-De-Beukelaer's Career Development Report concerning the period from 1 January 2005 to 31 December 2005, be set aside in so far as that report does not acknowledge her potential to carry out duties in category B*.

In support of its appeal, the Commission relies on a single plea in law, alleging, first, infringement by the CST of the principles relating to the scope of the review exercised by the Community judicature of its own motion and, second, infringement of the prohibition on adjudicating *ultra petita*.

The Commission submits that the CST was not entitled to raise of its own motion a plea concerning the substantive legality of the contested act alleging infringement of the respective scope of Article 43 of the Staff Regulations of Officials of the European Communities and Article 10(3) of Annex XIII to those regulations, since substantive pleas are not an absolute bar to proceeding with an action.

In the alternative, the Commission claims that, in so far as paragraphs 75 and 76 of the judgment under appeal could be considered separable from the plea alleging the substantive legality of the contested measure and be categorised as a separate plea alleging that the author of the contested act exceeded its power, the CST infringed the Commission's rights of defence, since the latter was not heard on that point in accordance with Article 77 of the Rules of Procedure of the CST.

Action brought on 6 May 2008 — Ivanov v Commission

(Case T-166/08)

(2008/C 183/46)

Language of the case: French

Parties

Applicant: Vladimir Ivanov (Boulogne Billancourt, France) (represented by: F. Rollinger, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— Declare that the Commission is liable for infringement of the principles of transparency, proper administration, non-discrimination and equal treatment in connection with the recruitment procedure which took place following the vacancy notice for a post as a 'Pre-enlargement Adviser and Political Rapporteur' based in Sofia, in May 2003;

— Order the Commission to make good, on the basis of the second paragraph of Article 288 of the Treaty establishing the European Community, the damage which it caused to the applicant;

— Accordingly, order the Commission to pay to the applicant the amount of EUR 180 000 as damages for the loss sustained;

— Order the Commission to pay the amount of EUR 10 000 in respect of non-material damage sustained by the applicant;

— Order the Commission of the European Communities to pay the costs and expenses.

Pleas in law and main arguments

In 2003, the applicant applied for a local member of staff's post as a 'Pre-enlargement Adviser' in Sofia. His application was rejected at the preliminary selection stage on account of his dual Franco-Bulgarian nationality as only candidates who had the nationality of a Member State were eligible for the vacant post.

During the recruitment procedure and after the rejection of his application, the applicant unsuccessfully requested more information regarding the procedure and the reasons for the rejection of his application. He then brought the matter before the European Ombudsman, who concluded that there had been maladministration and infringement of the principle of non-discrimination or of equal treatment on the part of the Commission.

By the present action, the applicant requests that the Court of First Instance declare that the Commission is non-contractually liable for infringement of the principles of transparency, proper administration, non-discrimination and equal treatment in connection with the recruitment procedure in question.

Action brought on 13 May 2008 — DEI v Commission

(Case T-169/08)

(2008/C 183/47)

Language of the case: Greek

Parties

Applicant: Dimosia Epikhirisi Ilektrismou A.E. (Athens, Greece) (represented by: P. Anestis, lawyer)

Defendant: Commission of the European Communities

Form of order sought

— annul the contested decision;

— order the defendant to pay the costs.

Pleas in law and main arguments

By this action, the applicant seeks the annulment of Commission Decision C(2008) 824 final of 5 March 2008 relating to the grant or retention in force by the Hellenic Republic of rights for the mining of lignite in favour of Dimosia Epikhirisi Ilektrismou (Public Power Corporation).

The applicant puts forward the following pleas for annulment.

The applicant submits, first, that the defendant erred in law when applying Article 86(1) EC in conjunction with Article 82 EC, and made a manifest error of assessment.

Specifically, according to the applicant the defendant erred (i) with regard to the definition of the relevant markets; (ii) with regard to application of the theory of extension of a dominant position, since it did not take into account that, even in the case of public undertakings, the extension must be based on State measures that grant exclusive or special rights; (iii) because the Greek legislation on the basis of which the applicant acquired rights in respect of the exploitation of lignite does not lead to a situation of unequal opportunity to the detriment of competitors; (iv) since the aforementioned legislation does not lead to the maintenance or strengthening of the applicant's dominant position in the wholesale electricity market; and (v) by reason of a manifest error of assessment in not taking into account the recent developments in the Greek electrical energy market inasmuch as they were important for proving the absence of an infringement.

Under the second plea for annulment, the applicant submits that, in issuing the contested decision, the defendant did not comply with the rules laid down by Article 253 EC that govern the statement of reasons.