

The applicant claims that the Court should:

- annul the decision of the Parliament not to promote the applicant to Grade LA 4 for the promotions year 1996,
- order the Parliament to pay the costs.

*Pleas in law and main arguments adduced in support:*

The applicant, an official in Grade LA 5, challenges the European Parliament's decision not to promote him to Grade LA 4 for the promotions year 1996. He maintains that the Parliament has offered no explanation in justification of its refusal to promote him, even though the consultative committee on promotions had been recommending him since the promotions year 1995. In his submission, the contested decision is therefore vitiated by a total failure to state reasons.

The applicant further submits that the Parliament either failed to carry out a comparative examination of the merits of the applicant and other officials eligible for promotion to Grade LA 4, or carried out such an examination without taking account of his staff reports and without seeking information on his merits allowing their 'notional absence' to be compensated for. By adopting the contested decision, the Parliament therefore infringed Article 45 of the Staff Regulations, committed a manifest error of assessment and infringed the principle of equality of treatment between officials eligible for promotion.

**Action brought on 23 April 1997 by Carmen Gómez de Enterría against the European Parliament**

(Case T-131/97)

(97/C 212/58)

*(Language of the case: French)*

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 23 April 1997 by Carmen Gómez de Enterría, residing in Luxembourg, represented by Eric Boigelot, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Louis Schiltz, 2 Rue du Fort Rheinsheim.

The applicant claims that the Court should:

- annul the decision taken by the Bureau of the European Parliament at its meeting of 15 and 16 July 1996 (Ref.: PE 251.357/BUR) in its capacity as appointing authority,
- as a consequence of the forthcoming judgment, rule that, in accordance with Article 176 of the Treaty of Rome, the appointing authority must reinstate the applicant with full rights, ensuring in particular that she is restored to the post from which she was retired, at the same grade, and paid the salary arrears due

from the date on which she was retired until her reinstatement, together with interest at the legal rate of 8 % per annum,

- annul, if necessary, the letter of 9 October 1996 from Klaus Hänsch, President of the European Parliament, informing the applicant of the Bureau's decision, referred to above,
- order the European Parliament to pay the costs in their entirety.

*Pleas in law and main arguments adduced in support:*

The applicant states that the Court of First Instance annulled a decision taken by the Parliament in 1994, retiring her from her post (<sup>1</sup>). Following that judgment, the Parliament adopted a new decision by which it 'confirms' its 1994 decision retiring the applicant from her post and rejects her candidature for the posts of Director-General in DG I and of Special Adviser at the Epicentre in Brussels.

The applicant maintains, first, that the Parliament did not give effect to all the legal consequences entailed in the judgment of the Court of First Instance since, by virtue of being annulled, the unlawful decision adopted in 1994 is retrospectively deemed never to have existed. Thus the applicant should have been restored to the same legal position as the one she had at the time when the annulled decision was adopted, and the Parliament was not entitled to use that decision as the basis for the decision contested in the present case. Thus the Parliament has acted in contravention of Article 176 of the EC Treaty and the general principle of *res judicata*.

Article 25, second paragraph, and Article 50 of the Staff Regulations have also been infringed, in that the contested decision does not enable the grounds for the applicant's retirement from her post to be ascertained with certainty and precision, nor does it establish that such a step was in the interests of the service, which would have enabled Article 50 of the Staff Regulations to be properly invoked.

The applicant also emphasizes that the manner of the decision's adoption gave her no opportunity to defend her interests effectively, since the appointing authority (in this case, the Bureau of the Parliament) disregarded the observations which she had submitted concerning the issue in question, which amounts to a breach of her right to a fair hearing.

Furthermore, the contested decision is vitiated, in that it is *ultra vires* and involves a misuse of powers, in so far as it was adopted on grounds other than the interests of the service stipulated by Article 50 of the Staff Regulations and in circumstances such that there is no legally acceptable justification for it. The applicant concludes that the Parliament used its powers for purposes other than those for which they were conferred.

Lastly, the applicant argues that the Parliament did not fulfil its obligation to take decisions affecting the personal circumstances of officials within a reasonable length of time. The decision adopted by the Bureau at its meeting on 15 and 16 July 1996 was not communicated to her until 9 October 1996, after she had addressed requests to

the administration. As a result, despite its particularly insecure nature, she was left in ignorance of her situation for nearly three months. In the applicant's view, such conduct on the part of the Parliament is unacceptable and caused her not only material damage, but also non-material damage.

(<sup>1</sup>) Judgment of 14 May 1996 in Case T-82/95 (OJ No C 180, 22. 6. 1996, p. 28).

**Action brought on 29 April 1997 by Bernard Yasse  
against the European Investment Bank**

(Case T-141/97)

(97/C 212/59)

*(Language of the case: French)*

An action against the European Investment Bank was brought before the Court of First Instance of the European Communities on 29 April 1997 by Bernard Yasse, residing at Fauvillers (Belgium), represented by Pascale Delvaux de Fenffe and Pierre-Paul Van Gehuchten, of the Brussels Bar, with an address for service at Schouweiler (Luxembourg) at the Chambers of Michel Hautem, 90 Route de Longwy.

The applicant claims that the Court should:

- annul the decision taken on 31 January 1997 by the European Investment Bank (EIB),
- as a consequence, order the applicant to be reinstated in his duties,
- order the EIB to pay the applicant:
  - upon his reinstatement, the sum of Bfrs 2 666 466 — a provisional amount subject to increase in the course of the proceedings — representing salary arrears, together with Bfrs 1 000 000 by way of compensation for material and non-material damage,
  - should his reinstatement prove impossible:
    - the sum of Bfrs 1 390 150 by way of ordinary compensatory settlement for lawful dismissal,
    - the sum of Bfrs 35 986 625 subject to increase or adjustment in the course of the proceedings,
    - the sum of Bfrs 2 500 000 by way of compensation for the loss of preferential rates of interest on building loans,
    - Bfrs 1 000 000 by way of compensation for the injury to his professional reputation,
- order the EIB to pay the sum of Bfrs 300 000 to the applicant in his capacity as legal guardian of the person and property of his child who is a minor,
- order the EIB to bear all costs.

*Pleas in law and main arguments adduced in support:*

The pleas in law and main arguments are similar to those relied on in Case T-140/97.

**Action brought on 7 May 1997 by Natural Van Dam AG  
and Danser Container Line BV against the Commission of  
the European Communities**

(Case T-155/97)

(97/C 212/60)

*(Language of the case: Dutch)*

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 7 May 1997 by Natural Van Dam AG, a company incorporated under Swiss law, and Danser Container Line BV, represented by J. Van Dam, of the Rotterdam Bar, with an address for service in Luxembourg at the Chambers of F. Entringer, 34a Rue Philippe II.

The applicants claim that the Court should:

- annul the decision of the European Commission of 7 March 1997 (SG(97) D/1862), whereby it was decided not to grant the applicants the exemption applied for under Article 8 (3) (c) of Council Regulation (EEC) No 1101/89 (<sup>1</sup>), and, notwithstanding that decision, grant the exemption sought,
- order the defendant to pay the costs.

*Pleas in law and main arguments adduced in support:*

The applicants operate a container line service on the Rhine. They are contemplating the construction of three specialized vessels intended for the transportation of certain hazardous materials, in respect of which they have sought from the Commission exemption from the prohibition contained in Article 8 (1) of the aforementioned Regulation.

In their view, the rejection of their application is contrary to the objective of the regulation, which is not aimed at curbing the influx of new cargo capacity into the inland waterway system. The applicants further complain that the Commission's assessment of the facts is incorrect and deficient and that its statement of reasons for its decision is defective.

(<sup>1</sup>) Council Regulation (EEC) No 1101/89 of 27 April 1989 on structural improvements in inland waterway transport (OJ No L 116, 28. 4. 1989, p. 25).