

The applicant submits that, in accordance with the judgment in *Orkem*⁽³⁾, it is not obliged to answer questions which could lead to self-incrimination. It further maintains that in accordance with Article 6(1) of the European Convention on Human Rights, the guarantees contained in which are fundamental principles of Community law and thus take precedence over the merely legislative provisions of Regulation 17, it is legally entitled to refuse to take any action whereby it would be compelled directly to incriminate itself in the investigation. Self-incrimination has, it adds, also been held to be an infringement of the presumption of innocence under Article 6(2) of the European Convention on Human Rights and of the negative freedom of expression protected by Article 10 of the Convention. The applicant's right not to be compelled to incriminate itself by its own actions arises not merely from Community law, but also, the applicant submits, arises at the same time and in parallel from German domestic law in so far as it is not superseded by Community law.

By directly fixing a coercive fine, the Commission disregarded the two-stage procedure laid down for that purpose, and failed in particular to communicate the points of complaint, as required before fixing the amount of daily coercive penalties, to allow the applicant a proper hearing and to comply with the other procedural requirements. Moreover, the Commission's fixing of the daily penalty at the maximum amount of ECU 1 000 was disproportionate and thus an abuse of its discretion. The applicant comprehensively answered seven of the eleven questions put to it in the context of the Commission's enquiry. It was not obliged to answer the four remaining questions, as in that respect it could rely on its right not to be compelled to incriminate itself.

⁽¹⁾ Case T-30/91 *Solvay v. Commission* [1995] ECR II-1821.

⁽²⁾ Case T-36/91 *ICI v. Commission* [1995] ECR II-1847.

⁽³⁾ Case 374/87 *Orkem v. Commission* [1989] ECR 3282.

Action brought on 23 July 1998 by Peter Clausen against the Council of the European Union

(Case T-113/98)

(98/C 312/40)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 23 July 1998 by Peter Clausen, resident in La Hulpe, Belgium, represented by Jean-Noël Louis, Véronique Leclercq, Ariane Tornel and Françoise Parmentier, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

- annul the Council decision of 6 October 1997 refusing the request for refund of that part of the pension

rights transferred to the Community pension scheme which was not taken into consideration in the calculation of the pensionable service to be taken into account pursuant to Article 11(2) of Annex VIII to the Staff Regulations,

- order the Council to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are those already raised in Case T-103/98 *Kristensen v. Council*⁽¹⁾.

⁽¹⁾ OJ C 299, 26.9.1998, p. 36.

Action brought on 29 July 1998 by Ivar Langer Andersen against the Council of the European Union

(Case T-118/98)

(98/C 312/41)

(Language of the case: French)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 29 July 1998 by Ivar Langer Andersen resident in Rungsted Kyst, Denmark, represented by Jean-Noël Louis, Véronique Leclercq, Ariane Tornel and Françoise Parmentier, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson SARL, 30 Rue de Cessange.

The applicant claims that the Court should:

- annul the Council decision of 6 October 1997 refusing the request for refund of that part of the pension rights transferred to the Community pension scheme which was not taken into consideration in the calculation of the pensionable service to be taken into account pursuant to Article 11(2) of Annex VIII to the Staff Regulations,

- order the Council to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are those already raised in Case T-103/98 *Kristensen v. Council*⁽¹⁾.

⁽¹⁾ OJ C 299, 26.9.1998, p. 36.