

Action brought on 30 July 1998 by André Hecq against the Commission of the European Communities

(Case T-119/98)

(98/C 312/42)

(Language of the case: French)

An action against the Commission of European Communities was brought before the Court of First Instance of the European Communities on 30 July 1998 by André Hecq, residing at Bonlez (Belgium), represented by Lucas Vogel, of the Brussels Bar, with an address for service at the Chambers of Christian Kremer, 6 Rue Heinrich Heine.

The applicant claims that the Court should:

- annul the implicit decision, deemed to have been made on 6 May 1998, rejecting the complaint submitted by the applicant on 5 January 1998 by which he contested the decision of 17 October 1997 calculating the expenses granted to him in respect of the mission to Ispra undertaken by him between 16 September and 20 September 1997,
- order the defendant to pay the costs, pursuant to Article 69(2) of the Rules of Procedure, together with the expenses necessarily incurred for the purposes of the proceedings, including, in particular, the cost of having an address for service, travel and subsistence expenses and lawyers' fees, in accordance with Article 73(b) of those Rules.

Pleas in law and main arguments adduced in support:

The applicant, a grade B 1 official, is currently on secondment in his capacity as the political secretary of a trade-union/staff association. Upon the occasion of a plenary meeting in Ispra of the Central Staff Committee, he received a travel order covering a period of five days. Having completed that mission, the applicant submitted a request for reimbursement of the mission expenses. However, the department dealing with missions within DG IX of the Commission drew up a calculation of mission expenses which granted the applicant a daily subsistence allowance in respect of only four and a half days.

The sole plea advanced in the present action alleges infringement of the provisions of Articles 12 and 13 of Annex VII to the Staff Regulations, in that the administration granted to the applicant, in respect of the mission undertaken by him, a daily subsistence allowance for only four and a half days instead of five days.

Action brought on 31 July 1998 by Taurus Beteiligungs-GmbH against the Commission of the European Communities

(Case T-121/98)

(98/C 312/43)

(Language of the case: German)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 31 July 1998 by Taurus Beteiligungs-GmbH & Co. KG, whose registered office is in Ismaning (Germany), represented by Hermanns and Ritvay, Rechtsanwälte, Berlin, with an address for service in Luxembourg at the Chambers of Loesch and Wolters, 11 Rue Goethe.

The applicant claims that the Court should:

- annul Commission Decision C(1998) 1439 final of 27 May 1998, as amended by Commission Decision C(1998) 1518 final of 2 June 1998, concerning a procedure applying Council Regulation (EEC) No 4064/89 ('the Merger Control Regulation') in Case IV/M.993 Bertelsmann/Kirch/Premiere,
- order the Commission to pay the costs.

Pleas in law and main arguments adduced in support:

By the contested decision of 27 May 1998 (in the version notified on 2 June 1998) the notified concentration through the acquisition by CLT-UFA SA and Taurus Beteiligungs-GmbH & Co. KG of joint control over the undertakings of Premiere Medien GmbH & Co. KG, Beta-Digital Gesellschaft für digitale Fernsehdienste mbH and BetaResearch Gesellschaft für Entwicklung und Vermarktung digitaler Infrastrukturen mbH was declared incompatible with the common market and the functioning of the EEA Agreement pursuant to Article 8(3) of Council Regulation (EEC) No 4064/89 of 21 December 1989 (as amended). In the Commission's view, that concentration would lead to the creation or strengthening of dominant market positions, whereby effective competition in a substantial part of the Community would be significantly impaired.

In its action, the applicant first complains of the infringement of essential procedural requirements. It maintains that the Commission infringed the principle of objective investigation in that it had already determined upon a negative decision before the actual proceeding began, without obtaining adequate knowledge of the subject matter. The applicant's right of access to the files was also infringed, as only partial access was granted and the time allowed was too short. In many respects, moreover, the subject matter was insufficiently explained. With its demand for a particular technical solution in the area of digital television, the Commission had exceeded its powers and attempted to impose changes in market structure that went far beyond the subject matter of the concentration proceeding.

Secondly, the applicant claims that there has been an infringement of Regulation (EEC) No 4064/89. The prerequisites for a prohibition of the Bertelsmann/Kirch/Premiere/DF1/DSF concentration were not met, since the concentration would not alter the market position. The concentration in BetaDigital was also wrongly prohibited, and the prohibition of the concentration in BetaResearch could not be justified. That prohibition was not supported by the necessary statement of reasons pursuant to Article 190 of the EC Treaty.

Thirdly, the applicant argues that the Commission should have allowed the concentration at least after the participants had declared themselves willing to give undertakings which would allow and encourage competition by third parties in the areas of both technology and programme rights.

**Action brought on 2 August 1998 by Claude Bochu
against the Commission of the European Communities**
(Case T-123/98)
(98/C 312/44)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 2 August 1998 by Claude Bochu, residing in Brussels, 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 Commission's decision to appoint the applicant a probationer official, in so far as that appointment classifies him in grade A 7, step 1,
- order the defendant to pay the costs, including those incurred by the applicant in defending his interests during the pre-litigation stage.

Pleas in law and main arguments adduced in support:

The applicant, a former grade B 3 member of the temporary staff who, having passed internal competition COM/A/16/93, was appointed to category A, contests the decision of the appointing authority to classify him in grade A 7, step 1.

He observes, first, that the contested decision refers in its preamble to Articles 1, 2, 4, 29, 30, 31, 32 and 34 of the Staff Regulations. Thus it did not officially refer to the third paragraph of Article 46 of the Staff Regulations, which is nevertheless the only provision applicable to officials who, having passed a competition, move up to a higher category. In his view, therefore, either the Commission relied on that provision and should state the reasons for applying it to the applicant, who, upon ceasing

to be a member of the temporary staff, became for the first time an official as such, or it relied on Articles 31 and 32 of the Staff Regulations and should state the reasons for its refusal to attach any weight whatever to the professional experience gained by the applicant over a period of nearly 13 years prior to his entry into service as an official.

The applicant advances the following pleas in support of his claims:

- infringement of Articles 4, 7, 31 and 32 of the Staff Regulations, in that, according to Community case-law, Article 32 of the Staff Regulations governs the position of staff members who become Community officials for the first time following a recruitment procedure. By contrast, Article 46 of the Staff Regulations, on the basis of which the contested decision appears to have been adopted, is designed to govern the promotion of Community staff members who already possess the status of official,
- breach of the obligation to provide a statement of reasons, as laid down in Article 25 of the Staff Regulations. The need to state such reasons is all the greater in the present case since the recruitment procedure relating to the post in issue was initially open to grade A 4 officials and the defendant thus implicitly accepted that the specific requirements of the post in question justified the recruitment of an official of that grade.

Lastly, the applicant asserts that there has been in the present case a manifest error of assessment, breach of the duty to have regard for the welfare and interests of officials and violation of the principles of good management and sound administration. He states in that regard that at no time during the procedure did either the Classification Committee or DG IX contact DG XI in order to obtain information concerning the specific needs of the service, with the result that the appointing authority possessed no information whatever enabling it to examine whether the specific needs of the service required the recruitment of the applicant in a grade other than the lowest grade. Moreover, the appointing authority ignored the fact that he possessed over seven years' post-university experience and the level of responsibility of the duties which had been entrusted to him in the Commission.

**Action brought on 2 August 1998 by Corrado Politi
against the European Training Foundation**
(Case T-124/98)
(98/C 312/45)

(Language of the case: French)

An action against the European Training Foundation was brought before the Court of First Instance of the European Communities on 2 August 1998 by Corrado Politi, residing in Turin (Italy), represented by Jean-Noël Louis, Ariane Tornel and Françoise Parmentier, of the Brussels