

**Action brought on 25 November 1998 by Compañía Internacional de Pesca y Derivados, S.A. (INPESCA) against Commission of the European Communities**

(Case T-186/98)

(1999/C 20/57)

*(Language of the case: Spanish)*

An action against the Commission of the European Communities was brought before the Court of First Instance on 25 November 1998 by Compañía Internacional de Pesca y Derivados, S.A. (INPESCA), whose registered office is in Bermeo (Spain), represented by María Iciar Angulo Fuertes and Begoña Angulo Fuertes, of the Bizkaia Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt.

The applicant claims that the Court of First Instance should:

- Annul contested decision;
- Hold, in accordance with the second paragraph of Article 176 of the EC Treaty, in conjunction with Article 178 and the second paragraph of Article 215 thereof, that Compañía Internacional de Pesca y Derivados, S.A. (INPESCA) is entitled to receive, as compensation for the damage caused to it by the issue of the contested decision, the sum of ESP 216 886 200, together with default interest in respect of the withholding of such Community financial aid, from 12 March 1992 until the date on which it is received, in accordance with the legal principles common to the Member States;
- Order the Commission to pay the costs.

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

In this action the applicant, whose objects include the building, purchase, management, chartering, repair and operation of ships, seeks annulment of the Commission's decision of 16 September 1998 refusing to grant the Community financial aid applied for in relation to the building of a vessel for the catching and freezing of tuna (No ES/0002/90 and ES/0224/91).

By decisions of 18 December 1990 and 8 November 1991 the Commission declared that, despite meeting all the requirements laid down for the grant of aid at issue, the abovementioned project could not qualify for such aid because the budgetary resources under the relevant headings for 1991 and 1992 were insufficient.

The applicant considers it proved that those budgetary headings were left largely unused as a result of repayments and reductions or a shortage of applications and in addition that, because of the cancellation and repayment of considerable amounts of aid improperly granted for the construction or modernisation of fishing vessels, sufficient credit remains available to cover the project at issue in these proceedings.

Nor, in the applicant's view, is it permissible for the contested decision to refer to Article 37 of Regulation (EEC) No 4028/86<sup>(1)</sup>, which appears to limit the reconsideration of projects that have not been financed for lack of financial resources. In its view, the Commission itself, in Article 6(2) of its Proposal for a Council Regulation (EC) on structural measures in the fisheries sector<sup>(2)</sup>, stated that sums committed as assistance for projects by the Commission between 1 January 1989 and 31 December 1993 for which no final application for payment had been submitted would be released by the Commission on its own initiative, without prejudice to projects which had been suspended on legal grounds: this means that projects which are the subject of an application for judicial review, as in this case, must be taken into consideration. Also, the Court of Auditors of the European Communities, in its Annual Report for 1990, found that applications for financial aid of the kind provided for in Regulation (EEC) No 4028/86 were considered over a period of more than two financial years.

The applicant concludes by alleging that the contested decision involves a misuse of powers and breach of the principle of non-discrimination.

<sup>(1)</sup> Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ L 376, 31.12.1986, p. 7).

<sup>(2)</sup> OJ C 176, 9.6.1998, p. 44.

**Action brought on 25 November 1998 by Pascual Juan Cubero Vermurie against the Commission of the European Communities**

(Case T-187/98)

(1999/C 20/58)

*(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 25 November 1998 by Pascual Juan Cubero Vermurie, residing in Brussels, 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 of the appointing authority of 6 April 1998, by which it declined to promote the applicant to grade A 5 in the context of the 1998 promotion procedure;
- annul the decision of 9 October 1998 rejecting the complaint against the contested decision of 6 April 1998, which was submitted by the applicant on 27 April 1998 and registered in the Secretariat-General on 6 May 1998 under number R/436/98;
- order the defendant to pay to the applicant compensation for the material and non-material damage suffered by him, fixed on an equitable basis in the sum of BEF 250 000, subject to increase or decrease during the course of the proceedings;
- order the defendant to pay the costs in any event.

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

The applicant has previously worked in various capacities in the European public service (*inter alia* as a member of the defendant's Legal Service, as a legal secretary to a judge at the Court of Justice and as assistant to the Director-General of DG XXIV).

In support of his application, he pleads:

- infringement of the Staff Regulations, in particular the third and fourth paragraphs of Article 24 and Article 45(1) thereof;
- disregard of the general principles of law, such as the principle that all administrative acts must be based on grounds which are legally admissible — that is to say, relevant and not vitiated by any error of law or of fact — and the principle precluding an outcome which is contrary to justice or equity; and
- breach of the principles of proportionality, equality of treatment between officials and the protection of legitimate expectations.

The applicant maintains that, in adopting the contested decisions, the appointing authority applied arbitrary and inequitable criteria which have caused him serious damage.

The non-material damage suffered by the applicant results from the fact that, despite having been willing to move jobs in the course of his career with a view to increasing his experience and knowledge, he has been refused the

grade which he deserves. The material damage results from the non-receipt by him of additional remuneration from 1 April 1998, on which date he should have been promoted.

**Action brought on 4 December 1998 by Comune di Sassuolo against Commission of the European Communities**

(Case T-189/98)

(1999/C 20/59)

*(Language of the case: Italian)*

An action against the Commission of the European Communities was brought before the Court of First Instance on 4 December 1998 by Comune di Sassuolo, represented by Fabio Dani, of the Ferrara Bar, with an address for service in Luxembourg at the Chambers of Alex Schmitt, 71 Rue de Aubépines.

The applicant claims that the Court of First Instance should:

- Annul the decision of Directorate General V of the Commission of the European Communities (D(98) DG V.A.4 DC/MG/se/980511 of 12 May 1998), communicated to the applicant — the Municipal Administration of Sassuolo — by the Ministry of Employment and Social Security of the Italian Republic on 5 October 1998;
- Order the defendant to pay the costs.

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

The applicant in this case, in Italian municipality, is challenging the refusal to extend a pilot project financed by the European Social Fund (Ariane Programme) relating to the testing and development of employment promotion systems.

It must be borne in mind in that respect, first, that, according to the project schedule, the final dates for determination of the expenses qualifying for a contribution, for final payments to the ultimate beneficiaries and for the evaluation of financing, were fixed as, respectively, 31 December 1996, 31 December 1997 and 30 April 1998. The activation of phase 4 of the project, known as 'Service Management', consisting *inter alia* in the opening of the counter to the public for the