

The applicant claims that the Court should:

- annul the Commission's decision of 14 January 2002 to retire the applicant on an invalidity pension set in accordance with the third paragraph of Article 78 of the Staff Regulations;
- order the Commission of the European Communities to pay the costs.

*Pleas in law and main arguments*

The applicant is an official of the Commission. The contested decision forced the applicant into retirement with the benefit of an invalidity pension set in accordance with the third paragraph of Article 78 of the Staff Regulations.

In support of his application, the applicant alleged infringement of Article 7 of Annex II to the Staff Regulations and infringement of the provisions relating to the operation of the Invalidation Committees. According to the applicant, the Invalidation Committee was not properly formed. The applicant also argues a breach of the duty to state reasons.

**Action brought on 17 December 2002 by 'P' against the Commission of the European Communities**

(Case T-377/02)

(2003/C 44/72)

(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 17 December 2002 by 'P', represented by Juan Ramon Iturriagoitia, lawyer.

The applicant claims that the Court should:

- annul the Commission's decision of 30 September 2002 replying to the complaint lodged on 5 July 2002 by the applicant on the basis of Article 90 of the Staff Regulations of Officials and Other Servants of the European Communities;
- order the defendant to pay all the costs of the proceedings.

*Pleas in law and main arguments*

The applicant is an official of the Commission and worked in the Berlaymont building, where he was exposed to asbestos. In 2001 the applicant asked to be given an invalidity pension on the basis of Article 78 of the Staff Regulations. That request was refused by the Commission.

The applicant claims, first, that in rejecting his complaint the Commission misconstrued the facts which led to the applicant's complaining about the malfunctioning of the Invalidation Committee as a result of linguistic problems.

The applicant also alleges that the principles of sound administration and the administration's duty to have regard to the welfare of officials were breached, as were the principle of the protection of legitimate expectations, the rights of the defence and the Charter of Fundamental Rights of the European Union. The applicant complains of irregularities in the procedure before the Invalidation Committee such as the abandonment of scheduled medical examinations, the problem of communication and the absence of a lawyer at the meeting of the Invalidation Committee.

**Action brought on 18 December 2002 by Antonio Andolfi against the Commission of the European Communities**

(Case T-379/02)

(2003/C 44/73)

(Language of the case: Italian)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 18 December 2002 by Antonio Andolfi, represented by Salvatore Amato, Lawyer.

The applicant claims that the Court should:

- annul the contested provision;
- order the European Economic Community to compensate the damages suffered and to be suffered by Seven Stars Pictures and Phoenix European S.r.l., to be liquidated in the course of the proceedings, together with clerical costs.

*Pleas in law and main arguments*

The applicant in the present action is the representative of Seven Stars Pictures Italia ('SSP'), a company with its head office in Rome and which, on 13 August 1977, applied, in the context of the Phare-Tacis Joint Venture Programme, for a financial contribution towards the incorporation of an Italo-Rumanian company (a joint venture project with Phoenix European S.r.l.). It is recorded that a contribution of EUR 81 327, together with a further EUR 4 099 in respect of the pre-feasibility stage, was granted, whereupon an advance of EUR 28 311 was paid to SSP and the corresponding contract was signed. At the end of the first phase of 'Facility 2' the remainder of the contribution was paid over.

According to the applicant, the relevant staff of the Commission had continuously assured the abovementioned company that everything was in order and that all that needed to be done was to calculate the precise amount still owing. However, on 30 October 2001, the Commission adopted the contested decision, refusing the joint venture company the contribution granted by the joint venture programme.

In support of its claims, the applicant argues that insufficient reasons were given and that the Commission made an error in its evaluation of the facts.

The statement of reasons given for the contested decision is too concise. Mention is made of a divergence between the project as approved and the joint venture ultimately set up, but no mention is made of any actual omission or discrepancy.

As regards the assertion that no documents are extant that prove that the joint venture in question became operational, and the allegation that no employees were even engaged and no turnover achieved, the applicant submits that it has shown that the joint venture is operational, that 12 professionals have been retained and that business has been commenced, in particular in the field of professional training.

The applicant claims compensation of the damages it has suffered as a result of the contested decision.

**Action brought on 13 December 2002 by G.D. Searle LLC against the Office for Harmonization in the Internal Market**

**(Case T-383/02)**

(2003/C 44/74)

(Language of the case: English)

An action against the Office for Harmonization in the Internal Market was brought before the Court of First Instance of the

European Communities on 13 December 2002 by G.D. Searle LLC, Illinois, United States of America, represented by Professor W. A. Hoyng, lawyer.

A further party to the proceedings before the Board of Appeal was PHYTO-ESP S.L.

The applicant claims that the Court should:

- annul the decision of the First Board of Appeal of the OHIM of 1 October 2002 (Case R 627/2001-1);
- order the OHIM to compensate Searle for the costs of these proceedings.

*Pleas in law and main arguments*

Registered Community trade mark against which a request for declaration on invalidity has been introduced: The word mark CELEBEX (No 852 372) for certain goods in class 5 (a.o. pharmaceuticals in the nature of anti-inflammatory analgesics)

Applicant for the Community trade mark: G.D. Searle LLC

Applicant for the declaration of invalidity of the Community trade mark: PHYTO-ESP S.L.

Trade mark or sign of the applicant for declaration of invalidity: The national word mark CEREB-RESP for certain goods in class 5 (pharmaceutical products a.o.)

Decision of the Cancellation Division: Declaration of invalidity of the Community trade mark CELEB-REX

Decision of the Board of Appeal: Dismissal of the appeal by G.D. Searle LLC

Grounds of claim: Infringement of Article 8(1)(b) of Regulation No 40/94<sup>(1)</sup> in that there is no likelihood of confusion between the marks ...

<sup>(1)</sup> Council Regulation (EC) No 40/94 of 20 December 1993 on the Community trade mark (OJ 11, p. 1).