

Action brought on 18 April 2003 by Common Market Fertilizers (CMF) against the Commission of the European Communities

(Case T-135/03)

(2003/C 158/45)

(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 18 April 2003 by Common Market Fertilizers, a company established in Brussels, represented by Alastair Sutton and Nathalie Flandin, lawyers.

The applicant claims that the Court should:

- annul Commission Decision REM 03/02;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant is a wholesaler of chemical products and in particular nitrogen solutions. It applied to the French customs authorities, under Article 239 of Regulation (EC) No 2913/92⁽¹⁾, for remission of customs duties in accordance with Article 3(1) of Regulation (EC) No 3319/94⁽²⁾. That application was forwarded by the French authorities to the defendant who, by its contested decision, refused remission.

In support of its action, the applicant relies on pleas in law and arguments which are similar to those relied on by the same applicant in Case T-134/03.

(1) Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code (OJ L 302, 19.10.1992, p. 1).

(2) Council Regulation (EC) No 3319/94 of 22 December 1994 imposing a definitive anti-dumping duty on imports of urea ammonium nitrate solution originating in Bulgaria and Poland, exported by companies not exempted from the duty, and collecting definitively the provisional duty imposed (OJ L 350, 31.12.1994, p. 20).

Action brought on 23 April 2003 by Ornella Mancini against the Commission of the European Communities

(Case T-137/03)

(2003/C 158/46)

(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 23 April 2003 by Ornella Mancini, residing in Brussels, represented by Eric Boigelot, avocat.

The applicant claims that the Court should:

- set aside the decision of the appointing authority of 28 June 2002 not to appoint the applicant to the post of medical consultant to the 'Brussels Medical Service' Unit of DG Admin B8;
- set aside the express decision of 23 January 2003 dismissing the complaint lodged by the applicant;
- set aside the appointment of another candidate to the post of medical consultant, which involved inter alia rejection of the applicant's candidature for the vacant post;
- order the defendant to pay to the applicant the sum of EUR 15 000 assessed ex aequo et bono as compensation for non-material damage and the adverse effect on the applicant's career;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, who is a medical doctor, is an official working in the Commission's medical service. In response to a notice of vacancy, she submitted her application for a post of medical consultant. The appointing authority did not select her and another candidate was appointed to that post.

The applicant takes the view that the appointing authority has breached Articles 14, 29(1)(a) and 45(1) of the Staff Regulations and has infringed the principles of legality, equal treatment of applicants, entitlement to pursue a career, equal opportunity, and equality as between men and women. In support of her claims, the applicant submits further that the appointing authority acted improperly during the appointment procedure and was guilty of a misuse of powers.

According to the applicant, the appointing authority committed a manifest error of assessment in selecting a candidate who did not satisfy the conditions set out in the notice of vacancy. The appointment of that candidate should for that reason be set aside. The applicant also asserts that there has been an infringement of the principle of equal treatment and of the rules governing the deliberations of the selection board. She claims that certain members of the selection board were not adequately qualified and/or lacked the impartiality and objectivity necessary for sitting on such a board. Furthermore, the staff reports of the applicant and of the candidate appointed evaluate their respective activities and profiles according to different criteria and provisions of the Staff Regulations. In conclusion, the applicant submits that the appointing authority infringed the principle of equality as between men and women. She argues that she was more meritorious than the candidate who was appointed. Moreover, in the event that her merits should be deemed to have been no more than equivalent to those of that candidate, priority ought to have been given to the applicant by reason of the fact that she is a woman.

Action brought on 24 April 2003 by 'U' and Others against the Council of the European Union and the Commission of the European Communities

(Case T-138/03)

(2003/C 158/47)

(Language of the case: French)

An action against the Council of the European Union and the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 24 April 2003 by 'U' and Others, represented by François Honnorat, lawyer.

The applicants claim that the Court should:

- order compensation for the non-material or material damage suffered by them as a consequence of the infection of their close relatives with BSE;
- order the defendants to pay the costs.

Pleas in law and main arguments

The applicants all live in France and are victims, either indirectly or as persons entitled under or through persons who have died in France, of a 'variant' form of Creutzfeldt-Jakob disease. By this action, the applicants are lodging a claim for damages to compensate for the material or non-material damage allegedly suffered as a consequence of the death of persons infected with BSE.

The applicants submit that the defendants made a manifest error of assessment, misused their powers and violated the legitimate expectations of European consumers.

The applicants maintain that the defendants made a manifest error of assessment in their management of the risks associated with the BSE epidemic by not recommending a forward scientific evaluation of the risk of BSE developing BSE in the various geographical areas of the Union at the time of identification of the causes of the epidemic and of adoption of the first protective measures in the United Kingdom. That manifest error of assessment is also evidenced by the failure of the defendants to call for a retrospective study to shed light on the cause of the infections subsequently recorded in France.

In support of their claims, the applicants submit that the defendants' conduct in this case constitutes a misuse of powers inasmuch as it was aimed only at protecting in an ill-considered manner the interests of the market and of the beef sector. According to the applicants, the defendants' action consisted in dissuading the Member States from adopting unilateral protective measures.

The applicants further maintain that the defendants' internal disorganisation led their staff to underestimate the risks of BSE developing and by that very fact constitutes a serious breach of the legitimate expectations of European consumers.

The applicants draw attention to the abnormal and special nature of the damage suffered by them as a result of the non-natural cause of BSE and of the inapplicability of the European system of producers' liability for defective products to the case in point.

Action brought on 28 April 2003 by Forum 187 against the Commission of the European Communities

(Case T-140/03)

(2003/C 158/48)

(Language of the case: English)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 28 April 2003 by Forum 187, Brussels, Belgium, represented by Mr A. Sutton and Mr J. Killick, Barristers.