

**Action brought on 28 May 2003 by Isabella Scippacercola
against the Commission of the European Communities**

(Case T-187/03)

(2003/C 200/45)

(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 May 2003 by Isabella Scippacercola, Brussels, Belgium, represented by Dr K. Adamantopoulos and Mr D. Papakrivopoulos, lawyers, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the Commission decision in the form of a letter dated 19 March 2003 and notified to the applicant by fax of 31 March 2003, refusing to the latter access to the cost-benefit study relating to the construction of the Spata Airport;
- order that the costs of, and occasioned by, these proceedings be borne by the respondent.

Pleas in law and main arguments

The applicant has requested from the Commission, amongst others, a copy of the cost-benefit analysis concerning the creation of the Spata Airport. According to the applicant, this document should have accompanied the application by Greece for assistance from the Cohesion Fund. The request for access to documents was refused by the Commission. With the refusal however, the Commission transmitted part of the application for assistance from the Cohesion Fund, which contained a short description of the main topics of the cost-benefit analysis. The confirmatory application by the applicant was also rejected.

In support of its application, the applicant submits in the first place that the Commission made a manifest error in law and a manifest error in the appreciation of the facts. According to the applicant, the Commission erred in its assumption that the document for which access was requested originated from a Member State. According to the applicant, Greece was not the original creator of the document, but merely forwarded the document as part of its application for assistance from the Cohesion Fund.

The applicant claims that, as a consequence, the Commission wrongly relied on and misinterpreted Article 4(5) of Regulation 1049/2001⁽¹⁾ regarding public access to European Parliament, Council and Commission documents and Article 5(4) of Decision 2001/937⁽²⁾ (sic). The applicant claims that the document should have been considered as a third party document and

hence Article 4(4) of Regulation 1049/2001 should have been applied.

The applicant also claims in this respect that the Commission infringed Article 1(a) of Regulation 1049/2001 and the principle of the widest possible access to documents held by the Commission.

Secondly, the applicant invokes a violation of Article 4(5) of Regulation 1049/2001 and Article 5(4) of Decision 2001/937 (sic) to the extent that the Commission failed to assess the justification given by Greece and, in doing so, gave a de facto power of veto to the Member State concerned.

The applicant furthermore invokes a violation of the obligation to state reasons and, finally, a violation of Article 4(6) of Regulation 1049/2001 to the extent that the Commission have allegedly failed to examine whether partial access should have been granted.

⁽¹⁾ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, p. 43).

⁽²⁾ 2001/937/EC, ECSC, Euratom: Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714) (OJ L 345, p. 94).

**Action brought on 4 June 2003 by Gustav Thommes
against the Commission of the European Communities**

(Case T-195/03)

(2003/C 200/46)

(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 4 June 2003 by Gustav Thommes, residing in Wezembeek-Oppem in Brussels (Belgium), represented by M. Thewes, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the defendant's decisions of 17 July 2002, 1 August 2002 and 3 March 2003;
- declare void the recovery of the second half of the installation allowance for the resettlement of his family;
- grant the applicant the installation allowance in respect of his transfer to Brussels;
- order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

The applicant is an official at the Commission. He worked from 1992 to 2000 in Brussels. In 2000 he was transferred to Luxembourg and then on 1 September 2001 he was transferred back to Brussels, where he moved back into the house in which he had previously lived.

The applicant alleges infringement of Article 5(1) of Annex VII to the Staff Regulations. In his view, he and his family did in fact move their family residence to his place of service in Luxembourg. His transfer back to Brussels cannot therefore be regarded as a return to his family residence.

The applicant submits that, under Article 85 of the Staff Regulations, recovery of a payment is justified only if the recipient was aware that there was no due reason for the payment or if the fact of the overpayment was patently such that he could not have been unaware of it. In the applicant's opinion, he was entitled to assume that the payment was justified as the Commission, in full knowledge of the facts, had decided to grant the installation allowance.

Lastly, the applicant alleges infringement of the principle of equal treatment of staff members. Installation allowance is payable to a staff member not entitled to the household allowance but not to a staff member entitled to the household allowance whose family have not yet settled at that staff member's place of service.

Action brought on 6 June 2003 by Annelies Keyman against the Commission of the European Communities

(Case T-200/03)

(2003/C 200/47)

(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 6 June 2003 by Annelies Keyman, resident in Overijse, Belgium, represented by Carlos Mourato, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul the appointing authority's decision of 10 March 2003 to dismiss her;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant in this case contests the appointing authority's decision to dismiss her for inadequate performance.

In support of her claims, she pleads breach of Article 51 of the Staff Regulations since she could not in the circumstances have been found to be in any way incompetent, breach of the duty to have regard to the welfare of officials, misuse of powers, breach of the right to an *inter partes* hearing at the time of the administrative inquiry, and disregard of the obligation to state reasons and of the principles of proportionality and good administration.

Finally, the applicant pleads that the principle of equal treatment has been infringed since similar cases have been treated differently.

Action brought on 10 June 2003 by Lars Bo Rasmussen against Commission of the European Communities

(Case T-203/03)

(2003/C 200/48)

(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 10 June 2003 by Lars Bo Rasmussen, residing in Hellerup (Denmark), represented by Gilles Bounéou, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- annul Commission Decision No 34988 of 1 July 2000;
- annul the decision of 21 January 2003 rejecting the complaint;
- order the defendant to repay the sums wrongfully recovered on the basis of Article 85 of the Staff Regulations together with interest for late payment;
- order the defendant to pay the applicant 10 000 EUR in damages or any other amount, even greater, that the Court may decide is equitable in compensation for the non-material damage sustained;
- order the defendant to pay the costs, expenses and fees.