

**Action brought on 25 February 2004 by Jamal Ouariachi against the Commission of the European Communities**

(Case T-82/04)

(2004/C 118/94)

(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 February 2004 by Jamal Ouariachi, residing in Rabat (Morocco), represented by France Blommaert, lawyer.

The applicant claims that the Court should:

- order the defendant to pay a lump sum of EUR 150 000 to the applicant as compensation for the non-material damage which he has sustained;
- order the defendant to pay all the costs.

*Pleas in law and main arguments*

The applicant, who has both Moroccan and Spanish nationality and resides in Morocco, has been divorced since 2000 and has visiting rights in respect of his two children, who are in their mother's custody. In 2002, the mother took the children to Sudan where, according to the applicant, she was joining a Commission official then working at the European Union Delegation in Khartoum, Sudan.

The applicant claims that, in order to be able to take the children away from their father and leave Moroccan territory to go to Sudan, his ex-wife had an invitation from the European Union Delegation in Khartoum, and that it is on the basis of that invitation that the Sudanese consulate issued a visa.

Furthermore, the applicant claims that the official in question usurped the applicant's identity by signing the two children's school reports.

**Action brought on 4 March 2004 by Marta Cristiana Moren Abat against the Commission of the European Communities**

(Case T-92/04)

(2004/C 118/95)

(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 March 2004 by Marta Cristiana Moren Abat, residing in Brussels (Belgium), represented by G. Leibitsch, lawyer.

The applicant claims that the Court should:

- declare void and annul the decision of the selection board of open competition COM/A/1/02 of 22 April 2003 by which the applicant was refused admission to the next stage of the selection procedure on the basis of the results of the preliminary test;
- declare void and annul the decision of the selection board of the appointing authority of 30 January 2004 concerning the applicant's complaint of 17 July 2003 under Article 90(2) of the Staff Regulations;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The pleas in law and main arguments correspond to those submitted in Case T-91/04 Just v Commission.

**Action brought on 16 March 2004 by AC-Treuhand AG against the Commission of the European Communities**

(Case T-99/04)

(2004/C 118/96)

(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 16 March 2004 by AC-Treuhand AG, Zürich (Switzerland), represented by M. Karl, C. Steinle and J. Drolshammer, lawyers.

The applicant claims that the Court should:

- annul the decision of the Commission of the European Communities of 10 December 2003 (rectified on 7 January 2004) in Case COMP/E-2/37.857 – Organic Peroxides insofar as it relates to the applicant;
- order the Commission of the European Communities to pay the costs.

*Pleas in law and main arguments:*

By the contested decision, the Commission found that the applicant and five other undertakings and groups of undertakings had infringed Article 81(1) EC by participating in a series of agreements and coordinated practices on the market for organic peroxides. A fine of EUR 1 000 was imposed on the applicant.

The applicant submits that it neither produces nor distributes organic peroxides and that it was at no time active on the market affected by the infringement. Its action is directed against the Commission's finding that it infringed Article 81 by providing services to three producers of organic peroxides. The Commission's erroneous legal assessment is based on incorrect factual allegations. The Commission adopted those false allegations without criticism because the applicant was unable to comment on them during the Commission's investigation. In doing so, the Commission infringed the applicant's rights of defence and acted in breach of the fundamental right to due process.

Moreover, the applicant states that, although the Commission imposed only a symbolic fine on it, it considers itself compelled to bring an action against the decision in order to obtain legal certainty for its business activities. In the words of the Commission, the decision sets a precedent by which the Commission enters new territory. If the decision were to become final, there would be a risk that, in future, services provided by the applicant which have thus far been lawful and which do not restrict competition would be prohibited and subject to a financial penalty.

The applicant submits further that the Commission has acted in breach of the principle of *nullum crimen, nulla poena sine lege* since the applicant was neither a party, as an undertaking, to the agreement restricting competition nor is it a group of undertakings. With respect to the applicant, the Commission's legal assessment is not only erroneous but also very unclear and inconsistent. The contested decision is also inconsistent with the need for clarity of measures and infringes the principle of legal certainty and the principle of the protection of legitimate expectations.

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**Action brought on 16 March 2004 by Peroxid-Chemie GmbH & Co. KG against the Commission of the European Communities**

**(Case T-104/04)**

(2004/C 118/97)

*(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 16 March 2004 by Peroxid GmbH & Co. KG, Pullach (Germany), represented by M. Karl and C. Steinle, lawyers.

The applicant claims that the Court should:

- annul Article 2(a), (c) and (d) of the Decision of the Commission of the European Communities of 10 December 2003 (notified on 7 January 2004) in Case COMP/E-2/37.857 – Organic Peroxide;
- in the alternative, reduce the fines imposed on the applicant in Article 2(c) and (d) of the decision;
- set the fine imposed on Akzo Nobel Polymer Chemicals B.V., Akzo Nobel N.V., and Akzo Nobel Chemicals International B.V., as jointly liable companies at EUR 120.75 million;
- order the Commission of the European Communities to pay the costs.

*Pleas in law and main arguments:*

By the contested decision the Commission held that the applicant and five other undertakings (including Akzo) or groups of undertakings infringed Article 81(1) EC by participating in a series of agreements and concerted practices on the market for organic peroxide. Two fines were imposed on the applicant. No fine was imposed on Akzo.

The applicant is not objecting to the decision as a whole but only to the fines imposed on it therein. The applicant takes the view that the Commission should not have imposed two fines on the applicant as a result of its participation in anti-competitive practices on the market for organic peroxide. The Commission either infringed the prescription provisions or the prohibition on double penalties. Even if the two penalties were imposed on the applicant for two different infringements, the first one (from 1971 to the end of August 1992) on the part of the applicant was already time-barred. If, on the other hand, both fines were imposed for one and the same continuous infringement on the part of the applicant, then there was a double penalty.

The applicant also argues that the Commission disregarded the maximum limit in Article 15(2) of Regulation No 17 as the fines imposed on the applicant by far exceeded 10 % of its total turnover in the last trading year before adoption of the decision. Furthermore, the Commission should not have classified the applicant as a second-time offender and should therefore not have been able to increase the basic amount of the fine imposed on the applicant by 50 %. In so doing the Commission infringed the principle of the presumption of innocence and the applicant's rights of defence.