

The applicant claims that the Court should:

1. annul the appointing authority's decision of 9 December 2004 responding to the applicant's complaint of 28 May 2004 and require the appointing authority to take whatever action is dictated by that annulment;
2. rule that any unjustified and objectively unjustifiable discrimination based on whether or not the place of origin and/or place of employment belongs, in the geographical sense, to the continent of Europe is unlawful and accordingly declare that Article 8(4) of Annex VII to the old Staff Regulations is unlawful;
3. recall, irrespective of the foregoing, that Réunion is an integral part of the Community under Article 299(2) of the EC Treaty and is also subject, through the accession of its Member State, to the EAEC Treaty and the Treaty on European Union and point out in that regard that European officials originating from that territory are entitled to equal treatment *vis-à-vis* those originating from a European territory, in the geographical sense, of a Member State;
4. award the applicant EUR 1 as token compensation for the non-material damage suffered and EUR 7 200 to compensate for the financial damage suffered.
5. order the defendant to pay the costs.

Pleas in law and main arguments

The applicant contests the Commission's decision not to acknowledge his entitlement, as an official originating from a French Overseas Department, to be covered by Article 8(1) to (3) of Annex VII to the Staff Regulations in the version in force before 1 May 2004.

In support of his action, the applicant pleads unlawfulness of the legal basis of the contested decision, namely Article 8(4) of Annex VII to the old Staff Regulations of Officials. According to the applicant, that provision is invalidated by the absence of a statement of reasons, is discriminatory and infringes Article 21(1) of the European Charter of fundamental rights of the European Union.

The applicant also alleges breach of the obligation to state reasons and breach of a number of rules and general principles of Community law, such as the duty to have regard to the welfare of officials, as well as manifest error of assessment, breach of the principle of equal treatment and breach of the principle of good administration

Action brought on 18 March 2005 by Umwelt- und Ingenieurtechnik GmbH Dresden against the Commission of the European Communities

(Case T-125/05)

(2005/C 115/66)

(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 18 March 2005 by Umwelt- und Ingenieurtechnik GmbH Dresden, Dresden (Germany), represented by H. Robl, lawyer.

The applicant claims that the Court should:

- annul the decision of 23 December 2004 refusing to award a contract to the applicant;
- annul the decision of 23 December 2004 awarding a contract to All Trade S.r.l.;
- order the defendant to pay the costs of the proceedings.

Pleas in law and main arguments

The applicant challenges the decision of the Commission of 23 December 2004 not to award the applicant Public Contract No AIDCO/A6/FP/co/2004/D/45370, Contract No 90-127 in the tender procedure 'Plan Improvement Project for South Ukraine NPP,' concerning a measure to introduce an intelligent control system for water quality in the nuclear power station in South Ukraine. The applicant also challenges the simultaneous decision to award this contract to the competitor All Trade S.r.l.

The applicant argues that the Commission:

- erroneously assessed that the applicant's tender did not comply with point 2.2.6 of the technical specification, although all of the services offered by the applicant fully satisfied the specification and this was confirmed by references,
- erroneously stated that the applicant did not comply with points 2.3.1 and 2.3.4 of the technical specification due to insufficient explanations and information, although the applicant's explanations were both extensive and exhaustive, and
- breached the duty to provide clarification and exceeded its discretion.

The applicant contends further that in assessing the price, the Commission incorrectly, and in breach of the requirements of paragraph 1.3 of the instructions to tenders based its decision solely on the basic tender price and thus, in spite of their relevance, the pricing of spare parts and maintenance costs were not taken into consideration.

Finally, the applicant submits that the competitor All Trade S.r.l. does not provide any guarantee, either by its expertise or financial standing or by its technical experience, that it will successfully carry out the project in question.

Action brought on 24 March 2005 by Lootus Teine Osühing against the Council of the European Union

(Case T-127/05)

(2005/C 115/67)

(Language of the case: English)

An action against the Council of the European Union was brought before the Court of First Instance of the European Communities on 24 March 2005 by Lootus Teine Osühing, established in Tartu (Estonia), represented by T. Sild and K. Martin, lawyers.

The applicant claims that the Court should:

- annul the annex to Council Regulation (EC) No 2269/2004 of 20 December 2004 amending Regulations (EC) Nos 2340/2002 and 2347/2002 as concerns fishing opportunities for deep sea species for the new Member States which acceded in 2004 ⁽¹⁾, as regards fishing opportunities allocated to Estonia;
- annul Part 2 of the Annex to Council Regulation (EC) No 2270/2004 ⁽²⁾ of 22 December 2004 fixing for 2005 and 2006 the fishing opportunities for Community fishing vessels for certain deep-sea fish stocks, as regards fishing opportunities allocated to Estonia;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant is an Estonian fishing company which practises deep sea fishing in the area of the North East Atlantic Fisheries

Convention. Estonia was a party to that Convention prior to its accession to the European Union. Article 6(9) of the Act of Accession of Estonia and the other new Member States to the European Union ⁽³⁾ provides that as from the date of accession, fisheries agreements concluded by the new Member States shall be managed by the Community and that the rights and obligations resulting for the new Member States from those agreements shall not be affected during the period in which the provisions of those agreements are provisionally maintained. It is in this context that the contested measures were issued, allocating Estonia fishing opportunities, measured in metric tons of allowable catch of certain stocks in 2004, 2005 and 2006.

According to the applicant these allocations constitute only a fraction of what Estonia legally harvested before accession. On this basis the applicant contends that the contested measures violated Article 6(9) of the Act of Accession as well as the principle of proportionality, and should therefore be annulled.

⁽¹⁾ OJ L 396, 31.12.2004, p. 1.

⁽²⁾ OJ L 396, 31.12.2004, p. 4.

⁽³⁾ OJ L 236, 23.09.2003.

Action brought on 23 February 2005 by Wal-Mart Stores Inc. against the Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case T-129/05)

(2005/C 115/68)

(Language of the case to be determined pursuant to Article 131(2) of the Rules of Procedure — language in which the application was submitted: Spanish)

An action against the Office for Harmonisation in the Internal Market (Trade Marks and Designs) was brought before the Court of First Instance of the European Communities on 23 February 2005 by Wal-Mart Stores Inc., represented by Fernand de Visscher, Emmanuel Cornu, Eric de Gryse, Donatienne Moreau, Jorge Grau Mora, Alejandro Angulo Labora, Maite Ferrándiz Avendaño, María Baylos Morales and Antonio Velásquez Ibáñez, lawyers.