

Operative part of the judgment

The Court:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community, within the period prescribed, the Italian Republic has failed to fulfil its obligations under that directive.

2. Orders the Italian Republic to pay the costs.

(¹) OJ C 224 of 16.9.2006.

**Order of the Court (Sixth Chamber) of 8 February 2007 —
Landtag Schleswig-Holstein v Commission of the European
Communities**

(Case C-406/06) (¹)

(Action of annulment — Court of Justice having no jurisdiction — Referral to Court of First Instance)

(2007/C 95/25)

Language of the case: German

Parties

Applicant: Landtag Schleswig-Holstein (represented by: S. Laskowski and J. Caspar, acting as agents)

Defendant: Commission of the European Communities

Re:

Annulment of Commission decisions of 10 March 2006 and 23 June 2006 refusing to grant the applicant access to the document SEC(2005) 420, of 22 March 2005, containing a legal analysis relating to a draft framework decision, under discussion in the Council, on the retention of data processed and stored in connection with the provision of publicly available electronic communication services or data transmitted on public communications networks, for the purposes of prevention, investigation, detection and prosecution of crime and criminal offences, including terrorism (Council document 8958/04 CRIMORG 36 TELECOM 82)

Operative part of the order

(1) Case C-406/06 *Landtag Schleswig-Holstein v Commission* is referred to the Court of First Instance of the European Communities.

(2) The costs are reserved.

(¹) OJ C 294, 2.12.2006, p. 33.

**Appeal brought on 22 January 2007 by Wineke Neirinck
against the judgment of the Court of First Instance (Second
Chamber) delivered on 14 November 2006 in Case T-494/
04 Neirinck v Commission**

(Case C-17/07 P)

(2007/C 95/26)

Language of the case: French

Parties

Appellant: Wineke Neirinck (represented by: G. Vandersanden, L. Levi, avocats)

Other party to the proceedings: Commission of the European Communities (represented by: J. Curall, D. Martin, acting as Agents)

Form of order sought

— Set aside the judgment of the Court of First Instance of 14 November 2006 in Case T-494/04;

— accordingly, uphold the applicant's claims at first instance and, thus,

— annul the decision of which the applicant became aware at the meeting of Unit OIB.1 (Office for Infrastructures and Logistics in Brussels — implementation of building policy) of 4 March 2004 that another candidate had been selected for the post of lawyer in the building policy sector within the OIB to which the applicant had applied (decision to recruit Mr D. S. as an auxiliary member of staff and decision not to appoint the applicant as an auxiliary member of staff);

— annul the decision of 9 March 2004 informing the applicant that her application had been rejected;

— annul the subsequent decision of 27 April 2004 informing the applicant that she had not passed the oral test of the recruitment procedure for contractual agents and annul the decision of that date to recruit Mr D. S.;

- in any event, award EUR 30 000 by way of compensation for material and non-material damage and harm suffered by the applicant, that amount being assessed on equitable principles on a provisional basis;
- order the defendant to pay the entire costs incurred at first instance and on appeal.

Pleas in law and main arguments

The applicant raises six pleas in support of her appeal.

By her first plea in law, she submits, first of all, that the Court of First Instance, by declaring the first head of claim for annulment inadmissible, disregarded the conditions of admissibility of an appeal based on Article 236 EC and Articles 90 and 91 of the Staff Regulations and, in particular, the concept of a legal interest in bringing proceedings. The decision to recruit Mr D. S. as an auxiliary member of staff by 1 May 2004 in fact had the effect, first, of increasing the number of candidates for the selection procedure for contractual agents for the position occupied by the applicant, and, secondly, of making it impossible to give the applicant a contract as a temporary member of staff, which clearly highlighted the interest which she had in securing annulment of that decision.

By her second plea, the applicant argues that the Court did not fulfil its general duty to state reasons by considering that the information contained in the decision of 27 April 2004 could be regarded as constituting a statement of reasons of some kind and that the supplementary information provided in the course of the proceedings compensated for the initial inadequacy of the statement of reasons. First, the decision of 27 April 2004 did not contain any reasons as to the particular situation of the applicant and did not set out any specific circumstances or facts known to the applicant such as to enable her to ascertain the scope of the decision. Secondly, such a lack of reasons cannot be covered by explanations provided by the competent authority after the appeal was lodged on pain of infringing the rights of the defence and the principal of equal treatment of the parties before the Community judicature.

By her third plea, the applicant asserts that the Court distorted the evidence by concluding, in paragraph 105 of the judgment under appeal, that the selection procedure was not based on a comparative examination of the candidates' merits. That conclusion is in fact contradicted both by the defendant's written pleadings and by other passages in the judgment under appeal in which the Court itself makes explicit reference to a comparative examination — within that recruitment procedure — of the candidates' merits.

By her fourth plea, the applicant submits that the Court also distorted the evidence and disregarded the concept of abuse of process by holding that the evidence put forward by the applicant did not enable an abuse of process or infringement of the interest of the service to be established. All the factors put forward by the applicant constitute, on the contrary, both consistent and relevant evidence of an abuse of process since, although two distinct sets of proceedings were brought by the defendant, the duties which they sought to appeal were the same, which reflects the desire of the defendant to give advantage to Mr D. S. in taking up the duties of the applicant after 30 April 2004.

By her fifth plea, the applicant argues that the Court disregarded the concepts of the interest of the service and manifest error of assessment by holding that the selection procedure for contractual agents had not been infringed and by refusing, as a result, to review the assessment made by the selection committee of the applicant's oral examination.

By her sixth plea, the applicant alleges, finally, breach by the Court of the principles of due care and sound administration.

Reference for a preliminary ruling from the Diikitiko Efetio Athinon (Greece) lodged on 5 February 2007 — Motosikletistiki Omospondia Ellados (MOT.O.E) v Elliniko Dimosio

(Case C-49/07)

(2007/C 95/27)

Language of the case: Greek

Referring court

Diikitiko Efetio Athinon

Parties to the main proceedings

Applicant: Motosikletistiki Omospondia Ellados (MOT.O.E)

Respondent: Elliniko Dimosio (Greek State)