

COURT OF JUSTICE

**ORDER OF THE PRESIDENT
of the Second Chamber of the Court
of 31 July 1989**

**in Case 206/89 R: S., supported by Union
Syndicale-Bruxelles v. Commission of the European
Communities (*)**

(Application for suspension of operation)

(89/C 225/03)

(Language of the case: French)

*(Provisional translation; the definitive translation will be
published in the Reports of Cases before the Court)*

In Case 206/89 R: S., represented by Thierry Demaseure, Michel Deruyver and Gérard Collin, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 11, Boulevard Royal, against the Commission of the European Communities (Agents: Henri Etienne and Sean Van Raepenbusch), application for an interim measure in the form of suspension of the operation of the Commission's decision of 6 June 1989, refusing to recruit the applicant as a member of its temporary staff on the grounds that he is not physically fit, F. Schockweiler, Judge, acting as President of the Second Chamber of the Court of Justice of the European Communities, made an order on 31 July 1989, the operative part of which is as follows:

1. *The application for suspension of the operation of the decision is dismissed as inadmissible.*
2. *Costs are reserved.*

(*) OJ No C 216, 22. 8. 1989.

**Action brought on 31 July 1989 by the Ivo-Martin-Henri
Van Gerwen against the Commission of the European
Communities**

(Case 237/89)

(89/C 225/04)

An action against the Commission of the European Communities was brought before the Court of Justice of

the European Communities on 31 July 1989 by Ivo-Martin-Henri Van Gerwen, residing at 17 Piazza Parrocchiale, Angera (Varese), 21021 Italy, represented by Marcel Slusny, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 4 Avenue Marie-Thérèse.

The applicant claims that the Court should:

1. declare null and void the implied decision rejecting his complaint;
2. fix the date of the reinstatement which he should have been granted; and take account of the steps determined by his reinstatement;
- 2 (a) order the Commission to pay sums equivalent to the net remuneration which he would have received had he in fact been reinstated on 15 September 1969 or on such later date as is determined in accordance with the principles laid down by the Judgment of the Court in Case 785/79, *Pizziolo v. Commission* [1983] ECR 1343);
3. fix the provisional amount at B frs 5 million or such amount as is finally determined in the course of the proceedings;
4. fix the interest at 8 %;
5. order the Commission to pay the expatriation allowance provided for in Article 4 of Annex VII to the Staff Regulations for the period during which the applicant was not reinstated by the Commission;
6. determine the amounts due at one million Belgian francs or such sum as is finally determined in the course of the proceedings;
7. order the Commission to pay by way of damages the sum of B frs 5 million for the whole period during which he was unable to take part in the *ad hoc* committee procedure or such sum as is finally determined in the course of the proceedings;
8. order the Commission to pay interest at the rate of 8 % on the sum of B frs 5 million or such sum as is finally determined in the course of the proceedings;
9. appoint one or three experts for the purposes of determining the date on which the applicant could have been reinstated, in principle 15 September 1969;
10. order the Commission to pay the costs.

Contentions and main arguments adduced in support:

The applicant maintains that he should have been reinstated, after taking leave on personal grounds, on 15 September 1969 or, failing that, on such later date as is determined on the basis of the principles laid down in the case-law of the Court applying Article 40 (4) (d) of the Staff Regulations.

Action brought on 31 July 1989 by the Commission of the European Communities against the Italian Republic

(Case 239/89)

(89/C 225/05)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 31 July 1989 by the Commission of the European Communities, represented by D. R. Gilmour, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, Centre Wagner, Kirchberg.

The applicant claims that the Court should:

- declare that, by refusing to pay interest pursuant to Article 11 of Regulation (EEC) No 2891/77 on the sum of Lit 14 083 260, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;
- order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

The Commission considers that Article 11 of Council Regulation (EEC) No 2891/77 of 19 December 1977⁽¹⁾, as interpreted by the Court of Justice in its judgment of 22 February 1989 in Case 54/87, *Commission v. Italy*, is applicable.

⁽¹⁾ OJ No L 336, 27. 12. 1977, p. 1.

Action brought on 31 July 1989 by the Commission of the European Communities against the Italian Republic

(Case 240/89)

(89/C 225/06)

An action against the Italian Republic was brought before the Court of Justice of the European

Communities on 31 July 1989 by the Commission of the European Communities, represented by Dimitrios Gouloussis and Giuliano Marengo, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, Centre Wagner, Kirchberg.

The applicant claims that the Court should:

- declare that, by failing to adopt by 1 January 1987 measures implementing Council Directive 83/477/EEC of 19 September 1983 on the protection of workers from the risks related to exposure to asbestos at work⁽¹⁾ other than measures relating to asbestos-mining activities, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;
- order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

In its memorandum of 5 February 1988 the Italian authorities acknowledged that Directive 83/477/EEC had not yet been implemented as it should have been. Since then they have not notified the adoption of the requisite measures. The deadline laid down by the Directive is 1 January 1987, except for asbestos-mining activities, for which the deadline is 1 January 1990. Consequently, leaving aside mining activities, the Italian Republic has failed to implement the Directive within the prescribed period.

⁽¹⁾ OJ No L 263, 24. 9. 1983, p. 25.

Reference for a preliminary ruling by the First Section of the First Chamber of the Tribunal de Grande Instance de Paris by Judgment of that court of 15 July 1989 in the case of Société d'Application et de Recherches en Pharmacologie Sàrl v. Chambre Syndicale des Raffineurs et Conditionneurs de Sucre en France and Others

(Case 241/89)

(89/C 225/07)

Reference has been made to the Court of Justice of the European Communities by judgment of the First Section of the First Chamber of the Tribunal de Grande Instance (Regional Court), Paris, of 5 July 1989, which was received at the Court Registry on 1 August 1989, for a preliminary ruling in the case of Société d'Application et de Recherches en Pharmacologie Sàrl v. Chambre Syndicale des Raffineurs et Conditionneurs de Sucre en France and others on the following question: