

COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

Action brought on 23 November 1989 by The Algemene Financieringsmaatschappij Nefico BV against Commission of the European Communities

(Case T-157/89)

(90/C 14/12)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 23 November 1989 by The Algemene Financieringsmaatschappij Nefico BV, represented by Rechtsanwält Professor Arved Deringer and Rechtsanwält Dr. Frank Montag of Deringer, Tessin, Herrmann & Sedemund, with an address for service in Luxembourg at the chambers of M^c Aloyse May, 31, Grand-Rue.

The applicant claims that the Court should:

1. declare void Commission Decision 89/536/EEC of 15 September 1989, relating to a proceeding (IV/31.734 — Film purchases by German television stations) under Article 85 of the EEC Treaty (¹);

2. alternatively, declare the Decision void with respect of Nefico;

and

3. oblige the Commission to pay the costs of Nefico in the present proceedings.

Contentions and main arguments adduced in support:

The applicant asserts that the Decision violates the law in many respects:

1. The Commission did not take into account and evaluate all the information at its disposal. The agreements under discussion are in fact disproportionate and excessive in the meaning of the case-law of the Court of Justice, with respect to the quantity of program material covered, as well as with respect to the long licence periods; and as well as with respect to the territory. Therefore, they cannot be justified by the specific conditions of the market.
2. The Commission violated Article 85 (3) of the EEC Treaty because the requirements of this provision, namely improvement of the distribution of films, fair share for consumers, indispensability of the restrictions and no possibility of eliminating competition in respect of a substantial part of the products, are not met.
3. The Commission violated Article 85 (3) and Nefico's procedural rights as well as its obligation not to abuse its powers of discretion by granting the exemption because it could not legally exempt the agreements

against the express will of one of the parties thereto only on the application of the other party.

4. The Commission violated Article 86 of the EEC Treaty by granting the exemption because the excessive and intolerable restrictions of competition in the agreements are in the last resort due to an abuse of the dominant position enjoyed by the Degeto/ARD thus the result of actions prohibited by Article 86; the Commission may not grant an exemption under Article 85 (3) for the result of such prohibited abusive behaviour.

5. The Commission infringed Article 190 of the EEC Treaty in many respects in this proceeding so that the Decision must be invalidated for insufficient reasoning.

Action brought on 29 November 1989 by Dimitrios Coussios against the Commission of the European Communities

(Case T-159/89)

(90/C 14/13)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 29 November 1989 by Dimitrios Coussios, residing at 8a, avenue des Ombrages, 1200 Brussels, represented by Jean-Noël Louis of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Yvette Hamilius, 7-11 route d'Esch.

The applicant claims that the Court should:

1. Declare that the application is admissible and well founded;

2. Consequently, declare void:

— the Commission's decision annulling the procedure for filling a post published under number COM/119/87,

— all the subsequent decisions adopted by the Commission based on that unlawful decision,

— as far as may be necessary, the implied rejection by the Commission of the administrative complaint lodged by the applicant on 27 April 1989;

(¹) OJ No L 284, 3. 10. 1989, p. 36.

3. Order the defendant to pay the costs of the proceedings, under either Article 69 (2) or the second subparagraph of Article 69 (3) of the Rules of Procedure, together with the costs necessarily incurred in connexion with the proceedings and, in particular, the costs relating to an address for service, travel and subsistence expenses and lawyer's fees in accordance with Article 73 (b) of those Rules.

Contentions and main arguments adduced in support:

In support of its action, the applicant pleads:

- an infringement of Article 25 of the Staff Regulations, inasmuch as the notification of the contested decision contained no statement of reasons enabling the applicant and the Court to ascertain whether it is well founded,
- an infringement of Article 45 of the Staff Regulations, inasmuch as the second vacancy notice was only issued in order to give a semblance of legality to a decision which had already been adopted, in a situation where the candidate selected could not even be appointed to a category A post,
- misuse of procedure, inasmuch as the contested decision had no other purpose than to enable a new vacancy notice to be published, and thus to give the candidate selected the opportunity of validly lodging his candidature.

Action brought on 4 December 1989 by Elfriede Sebastiani against the European Parliament

(Case T-163/89)

(90/C 14/14)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 4 December 1989 by Elfriede Sebastiani, residing at 39 rue de la Libération, L-5969 Itzig, Grand Duchy of Luxembourg, represented by Paul Greinert and Partners, Rechtsanwälte, 15 Hauptmarkt, D-5500 Trier, with an address for service in Luxembourg at the applicant's office, General Secretariat of the European Parliament, Bâtiment Tour, Bureau 8/38, Kirchberg, Luxembourg.

The applicant claims:

1. Compensation for the financial damage, together with interest at the usual bank rate, incurred by her as a result of the refusal to promote her on an interim basis;
2. By means of a back-dated promotion or promotion at a higher level to the B 3 post corresponding to her official duties, compensation for the financial damage, including interest, which the applicant has suffered in comparison with her comparable colleague in the French section (Head of French Pool), as a result of being placed at this disadvantage as regards promotion;
3. Reimbursement of the applicant's expenses in bringing these proceedings;
4. The Court is also asked to order the appointing authority to alter its staff policy which is discriminatory against individual Member States owing to an unjust allocation of posts and is not in keeping with Article 27 of the Staff Regulations, and in that way create the framework for a proper staff policy as defined in Articles 45 and 27 of the Staff Regulations, by means of a correct allocation of posts and promotions in the General Secretariat of the European Parliament.

Contentions and main arguments adduced in support:

On the basis of the criteria laid down for promotions in Article 45 (1) of the Staff Regulations, the applicant ought to have received promotion to B 3 at the latest at the same time as her colleague in the French section, as the applicant, although her staff reports were about the same, had more 'merits'. That she was not is owing to a discriminatory staff policy on the basis of nationality. This discrimination stems from the incompetence of the appointing authority in the allocation of posts to individual Member States generally and, in the applicant's particular case, from its inability to carry out and maintain a proper staff policy by means of an allocation of posts and promotions which is in accordance with Articles 27, 45 (1) and 7 (1).

The applicant is placed at a disadvantage and financially damaged by the staff policy operated by her appointing authority which discriminates against individual Member States and Community officials.