

Action brought on 1 June 1993 by Girish Ojha against the Commission of the European Communities

(Case T-36/93)

(93/C 178/11)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 June 1993 by Girish Ojha, residing at Korbeek-Lo (Belgium), represented by Jean-Noël Louis, Thierry Demaseure and Véronique Leclercq, of the Brussels Bar, with an address for service in Luxembourg at the offices of Fiduciaire Myson, 1 rue Glesener.

The applicant claims that the Court should:

- annul the Commission's decision of 20 October 1992 to transfer the applicant, with effect from 1 November 1992, to the Directorate-General for Employment, Industrial Relations and Social Affairs in Brussels,
- annul, in so far as is necessary, F. de Koster and J. Prat's decision of 9 October 1992, calling on the applicant to take the necessary steps to return to Brussels as from 1 November 1992,
- order the defendant to pay the applicant Bfr 500 000 by way of compensation for the non-material damage sustained by the applicant,
- take formal note of the applicant's decision to bring a separate action for compensation for his material loss,
- order the defendant to pay the costs.

Pleas in law and main arguments adduced in support:

The pleas in law and main arguments are the same as those in Case T-95/92 (1).

With regard to the claim for compensation, the applicant considers that the Commission itself, in its reply in Case T-95/92 R, recognized that the contested decision had caused him to sustain damage which could only be 'partially' compensated by payment of the allowances provided for in Annex VII of the Staff Regulations.

Furthermore, several defamatory accusations were levelled against him without the Commission's having conducted any inquiries before taking the decision to transfer him. That is a fault for which compensation must be paid.

Furthermore, compensation should be paid in respect of the losses relating to his occupation, his finances and his property stemming from the unacceptable uncertainty in which the relations between the applicant and the Commission have been conducted.

(1) OJ No C 326, 11. 12. 1992.

Action brought on 3 June 1993 by Axel Michael Stahlschmidt against the European Parliament

(Case T-38/93)

(93/C 178/12)

An action against the European Parliament was brought before the Court of First Instance of the European Communities on 3 June 1993 by Axel Michael Stahlschmidt, resident in Bourglinster (Luxembourg), represented by Georges Vandersanden, of the Brussels Bar, with an address for service in Luxembourg at the office of Fiduciaire Myson, 1 rue Glesener.

The applicant claims that the Court of First Instance should:

- annul the decision of 9 October 1992 ordering the applicant to reimburse sums unduly paid in respect of expatriation allowance from 1 October 1987 to 1 July 1992;
- order the defendant to pay all the costs.

Pleas in law and main arguments adduced in support:

The applicant challenges the decision of the European Parliament to recover sums unduly paid in respect of expatriation allowance from 1 October 1987, the date on which he acquired the nationality of the Member State where the institution in which he is employed has its seat.

In this connexion he considers that according to Article 85 of the Staff Regulation it is not possible to proceed to recover a sum unduly paid unless the recipient was aware that there was no due reason for the payment or the fact of the overpayment was patently such that he could not have been unaware of it.

With regard to the first condition, the applicant claims that as soon as he changed his nationality he informed the defendant of his own accord without receiving any reaction to that information until 25 June 1992. On the contrary, over that entire period the expatriation allowance continued to be paid to him. In answer to the defendant's argument that a personal data card of 12 June 1989 was sent to him on which it was stated that his expatriation allowance was suspended from 1 October 1987, the applicant strongly denies ever receiving such a card. Moreover, even had he known of the data card, it does not show clearly that the allowance was suspended.

With regard to the condition concerning patent overpayment, the applicant points out that that second case is generally considered only when lack of awareness was intentional or negligent. However, he had immediately informed the administration of the European Parliament of his change of nationality.

Moreover, the applicant, who is not a lawyer, could reasonably believe, on reading Article 4 (1) of Annex VII to the Staff Regulations, that regardless of the fact that he had acquired, in the course of his career, the nationality of the State where he was employed, whereas previously he did not have that nationality, he could validly continue to benefit from that allowance which he had been granted in the past; that belief was, moreover, confirmed by the absence of a contrary reaction on the part of the administration, which in fact took five years and eight months to react after the relevant information was supplied to it by the applicant himself.

Removal from the register of Case T-41/92 (*)

(93/C 178/13)

By order of 14 May 1993 the Third Chamber of the Court of First Instance of the European Communities ordered the removal from the register of Case T-41/92: Fernando Gouveia v. Court of Justice of the European Communities.

(*) OJ No C 173, 9. 7. 1992.