

Action brought on 31 July 2007 — Labate v Commission**(Case F-77/07)**

(2007/C 223/38)

*Language of the case: English***Parties**

Applicant: Kay Labate (Tarquinia, Italy) (represented by: I. S. Forrester, Queen's Counsel)

Defendant: Commission of the European Communities

Form of order sought

The applicant claims that the Tribunal should:

- Annul the Commission's decisions of 6 October 2006 and 18 October 2004,
- Order the Commission to pay to the Applicant the sums provided for by the Article 73 of the Staff Regulations of Officials of the European Communities (the 'Staff Regulations') and Article 9 of the Common Rules on the insurance of officials of the European Communities against the risk of accident and of occupational disease (the 'Insurance Rules'),
- Prescribe such other or further relief as justice may require,
- Order the Commission to pay the costs of the present action.

Pleas in law and main arguments

The applicant, Mrs. Kay Labate, widow of former European Commission official Mario Labate, on her own behalf and on behalf of her husband's estate, contests the Commission's decisions refusing to recognise the lung cancer of her husband as an occupational disease.

Mr Labate was an official with the Commission for 29 years, during which time he was exposed, according to the Applicant,

to a large amount of secondhand tobacco smoke. He was declared permanently invalid following the discovery of the lung cancer which subsequently led to his death. He submitted a request for recognition of the illness as an occupational disease. While acknowledging Mr Labate's exposure to secondhand tobacco smoke and finding no other cause for his lung cancer, the Medical Committee in its decision nonetheless stated that it could not establish with certainty the connection with his professional activities. The Commission accordingly denied the request, following the finding by the Medical Committee that the connection between the disease and Mr Labate's professional activities was not sufficiently established.

The applicant submits that the Commission erred as a matter of law by concluding that the cancer suffered by Mr. Labate is not covered by Article 73 of the Staff Regulations. She claims that the standard of 'certainty' employed by the Medical Committee is unreasonably strict and contrary to the case-law.

The applicant also submits that the Medical Committee failed to address the possibility that the secondhand tobacco smoke which Mr. Labate was exposed to could have aggravated his cancer, as defined in Article 3 of the Insurance Rules. Further, the Commission failed to address the issue that although secondhand tobacco smoke is not itself listed under that Article, several specific carcinogenic elements of secondhand tobacco smoke are listed and therefore covered by Article 73 of the Staff Regulations. The applicant claims that the Medical Committee wrongly attempted to examine questions of proof and evidence, beyond its competence, rather than merely establishing the medical facts.

Finally the Applicant contends that the decision by the Commission contained inadequate reasoning and that the time it took the Commission to arrive at a decision was excessive and contrary to principle of good administration. Had the decision been taken before Mr Labate's death and had it recognised his illness as work related, he would have received 8 years of salary by way of compensation.
