

**EUROPEAN UNION CIVIL SERVICE TRIBUNAL**

**Action brought on 13 December 2005 — Gesner v OHIM**

**(Case F-119/05)**

(2006/C 96/53)

*(Language of the case: Spanish)*

**Parties**

*Applicant:* Charlotte Gesner (Kildedalsvej, Denmark) (represented by: J. Vazquez Vazquez and C. Amo Quiñones, lawyers)

*Defendant:* Office for Harmonisation in the Internal Market

**Form of order sought**

The applicant claims that the Court should:

- order that the decision adopted by the Office for Harmonisation in the Internal Market (OHIM) of 2 September 2005 be annulled, to the extent that it dismisses the applicant's complaint of 10 May 2005 against its decision of 21 April 2005 refusing to appoint an invalidity committee.
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant, a temporary agent of OHIM until 15 April 2005, has suffered from a slipped disc and various conditions of her spinal column since 2003. Despite having surgery and undergoing medical treatment and physiotherapy, the applicant's acute back pain did not stop and the fact that she spent long periods sitting caused her condition to deteriorate, with the result that she was on sick leave for several months.

On 11 March 2005 the applicant requested OHIM to appoint an invalidity committee in order to establish her incapacity to perform her duties and grant her an invalidity allowance.

OHIM refused her application on two grounds. First, Article 59 of the Staff Regulations should be interpreted as meaning that the decision to convene an invalidity committee is a matter for the appointing authority. Second, since the applicant has been on sick leave for only 294 days in the last three years she has not completed the period prescribed in Article 59(4) of the Staff Regulations.

In her application, the applicant puts forward four main pleas. First, she argues that the appointing authority cannot arrogate to itself the power to convene an invalidity committee. If that were the case the appointing authority could determine in a pre-emptive, subjective and arbitrary manner whether the agent

or official was sufficiently incapacitated for him to be summoned before that committee.

In her second plea, the applicant states that the reasoning of the contested decision is incorrect. The application of the time-limits provided for in Article 59(4) of the Staff Regulations hinders access to an invalidity allowance by officials or agents who have not fulfilled that criterion, but who may be incapacitated as a result of accidents or illnesses which manifest themselves more quickly.

In her third plea the applicant claims that the provisions applicable to the appointment of an invalidity committee need not be limited to Article 59 of the Staff Regulations, but include provisions which fall within the legal framework governing access to invalidity allowances, namely Articles 31 to 33 of the Conditions of Employment for Other Servants of the European Communities, Article 9 of the Staff Regulations, and Annex VIII thereto.

In her final plea, the applicant argues that the contested decision infringes the principles of non-discrimination and equal treatment. OHIM prevents its staff from convening an invalidity committee although that possibility appears to be available to all other Community personnel. Moreover, as regards agents of OHIM having contracts of less than three years, it would be difficult for them to gain access to an invalidity allowance however incapacitated they were, because they could never satisfy the criterion laid down in Article 59(4) of the Staff Regulations.

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**Action brought on 13 January 2006 — Nicola Scafarto v Commission**

**(Case F-6/06)**

(2006/C 96/54)

*(Language of the case: Italian)*

**Parties**

*Applicant:* Nicola Scafarto (Luxembourg, Luxembourg) (represented by: A. D'Antuono and G. Somma, lawyers)

*Defendant:* Commission of the European Communities