

- appoint an expert;
- order the defendant to pay the costs.

### Pleas in law and main arguments

In support of his application, the applicant puts forward eight pleas in law.

First, he criticises the Commission for placing him at the heart of the 'Berthelot' affair and for considering him as the leading instigator of that affair, whereas in fact all of these allegations were false, and there was not the slightest evidence to support any such allegations against the applicant. In doing so, the Commission failed to fulfil its duty to have regard for the interests of officials and its duty of good administration, and frustrated the applicant's legitimate expectations.

Second, the applicant criticises the Commission for having gravely compromised his right to a fair hearing through all the failures and deficiencies in the administrative enquiries stemming from the 'Berthelot' affair, which were not carried out impartially.

Third, the applicant claims breach of the Commission's duty of confidentiality in allowing journalists, during the course of the year 2000, to enter OLAF's premises and thereby gain knowledge of certain confidential documents concerning the applicant, details of which were then broadcast in a television programme.

Fourth, the Commission criticises the Commission's decision to lift his immunity from jurisdiction.

Fifth, the applicant criticises the Commission for transferring him to the post of Chief Adviser in the Directorate-General Research and Technological Development, not in the interests of the Commission's service nor by applying the institution's mobility policy, but as a veiled disciplinary sanction.

Sixth, regarding the procedure for recognition of the occupational cause of the applicant's illness (Article 73 of the Staff Regulations), the applicant contests the Commission's decisions to exclude, from the outset, the possibility that his illness might be work-related, and to transfer his file to the Investigation and Disciplinary Office of the Commission (IDOC), so that the latter could carry out administrative enquiries seeking to determine the cause of his illness.

Seventh, the applicant relies on the independence of the procedures governed by Articles 73 and 78 of the Staff Regulations

and contests the Commission Invalidation Committee's decision indefinitely to stay the proceedings under Article 78(5) of the Staff Regulations, until a decision has been taken on the basis of Article 73 of the Staff Regulations.

Eighth, the applicant finds fault with the fact that disciplinary proceedings against him were initiated and continued, while the evidence that formed the basis of those proceedings had been found to be baseless by the Belgian courts, in criminal proceedings brought against the applicant.

The applicant concludes that the Commission's abovementioned wrongful acts are the cause of the nervous depression which forced him prematurely to end his career as an official. This state of affairs caused material damage and pain and suffering to him and his family.

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### Action brought on 15 August 2006 — Adelaida Lopez Teruel v Office of Harmonisation for the Internal Market

(Case F-97/06)

(2006/C 237/42)

*Language of the case: French*

### Parties

*Applicant:* Adelaida Lopez Teruel (El Casar, Spain) (represented by: G. Vandersanden, L. Levi and C. Ronzi, lawyers)

*Defendant:* Office of Harmonisation for the Internal Market

### Form of order sought

- annul the appointing authority's decision of 6 October 2005 to refuse the applicant's request to convene an Invalidation Committee, in accordance with Article 78 of the Staff Regulations;
- in so far as it is necessary, annul the appointing authority's decision of 5 May 2006 rejecting the complaint lodged by the applicant on 6 January 2006;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant, an official of OHIM, sent a request to the administration on 8 June 2005 asking that an Invalidity Committee be convened so as to decide on the existence of an invalidity within the meaning of Article 78 of the Staff Regulations. OHIM refused to convene such a Committee, pointing out first, that the appointing authority has discretion in such matters, and, second, that the disease she referred to could not give rise to invalidity proceedings, given that it had already given rise to arbitration proceedings.

In her application, the applicant raises three pleas in law, of which the first, alleging infringement of Article 78 of the Staff Regulations, is made up of two parts. In the first part, it is argued that the official in question has the right to bring a matter before the Invalidity Committee, irrespective of the right to do so also given to the appointing authority, given that Articles 78 and 59 of the Staff Regulations have a different *ratio legis* and govern different types of situations. In the second

part, the applicant takes issue with OHIM for having committed a manifest error of assessment and having exceeded the bounds of its powers, in that it substituted its assessment for that of medical experts.

The second plea alleges infringement of the duty to have regard for the welfare of officials and the principle of good administration. Specifically, OHIM did not weigh in the balance the interests in issue and did not at any time take into account the applicant's extremely delicate state of health.

The third plea alleges infringement of the principles of non-discrimination and equal treatment. According to the applicant, all other European Community officials can invoke the right to have their cases examined by an Invalidity Committee, unlike those of OHIM. The interpretation by OHIM of Article 78 of the Staff Regulations would lead to a rupture of the single administration of the Communities, as enshrined in Article 9(3) of the Treaty of Amsterdam.

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