

**Action brought on 24 September 2010 — Nencini v Parliament****(Case T-431/10)**

(2010/C 317/72)

*Language of the case: Italian***Parties***Applicant:* Riccardo Nencini (Florence, Italy) (represented by: F. Bertini, lawyer)*Defendant:* European Parliament**Form of order sought**

— Annul, on the grounds set out in the application, the decision of the Secretary-General of the European Parliament of 16 July 2010, addressed to Mr Riccardo Nencini, Communication No 312331 of the Director General of the European Parliament's Directorate-General for Finances of 4 August 2010, addressed to Mr Riccardo Nencini and, in so far as necessary, any other related and/or prior acts challenged in these proceedings.

— In the alternative, annul the contested decision and refer the matter back to the Secretary-General of the European Parliament for a fair reassessment of the sum at issue.

— In any event, order the defendant to pay the costs.

**Pleas in law and main arguments**

In support of his action, the applicant, a Member of the European Parliament who served during the period 1994 — 1999, relies on the following grounds:

— Infringement of the language regime of the European Community and consequent infringement of the rights of due process and the principle of effective protection, in so far as the two contested measures should have been written in Italian, the language of the Member State of which the applicant is a national.

— The claim for the sum purportedly owing is inadmissible, since the right to claim that sum is time-barred.

— Infringement of the principle that both parties must be heard and the principle of effective protection. It is submitted in this connection that, in the case of the applicant, the Secretary-General of the European Parliament adopted the final decision on the basis of facts and legal grounds which are, in part, different from those previously relied on and made known to the applicant.

— Infringement of the rules governing parliamentary allowances for Members of the European Parliament, with reference to travel allowances, by failing to take account of

the fact that, during the period in which the applicant served as an MEP, his place of residence was Rome. In that city, which is capital of Italy and the centre of national political life, Mr Nencini was continually engaged in political activities as the national leader of his political party.

— Infringement of the rules governing parliamentary allowances for Members of the European Parliament, with reference to the allowance for secretarial assistance. The applicant states he transferred to the persons employed as his personal secretaries all the allowances received for that purpose and did not retain any sum for himself.

— Finally, the applicant claims infringement of the general principle of proportionality.

**Action brought on 17 September 2010 — Vivendi v Commission****(Case T-432/10)**

(2010/C 317/73)

*Language of the case: French***Parties***Applicant:* Vivendi (Paris, France) (represented by: M. Struys, O. Fréget and J.-Y. Ollier, lawyers)*Defendant:* European Commission**Form of order sought**

— Annulment of the Commission's Decision of 2 July 2010 in Case COMP/C-1/39.653 — Vivendi & Iliad/France Télécom, by which the European Commission rejected Vivendi's complaint of 2 March 2009 under Article 7 of Council Regulation (EC) No 1/2003, relating to practices of France Télécom considered to be contrary to Article 102 of the TFEU;

— An order that the Commission pay the costs incurred by the applicant before the General Court.

**Pleas in law and main arguments**

The applicant seeks the annulment of Commission Decision C(2010) 4730 of 2 July 2010 rejecting, for lack of Community interest, the complaint lodged by the applicant against France Télécom relating to its alleged abuse of a dominant position, in breach of Article 102 of the TFEU, on the French broadband and telephone subscription market, alleging that France Télécom practised structural discrimination in the tariffs for its wholesale supplies to the advantage of its retail division and maintained too high a tariff for recurrent access to the local loop.

In support of its action, the applicant puts forward a number of pleas in law alleging, among other things:

- errors in law, manifest errors of assessment and breaches of its duty to examine carefully damage by the practices complained of to the functioning of the internal market, on the ground that the Commission confined itself to (i) examining only the mean level of prices for broadband on retail markets without inquiring whether that level of prices was actually likely to reveal the practices complained of, and (ii) a subjective assessment of the obsolete nature of the provision of a telephone subscription service;
- an insufficient statement of reasons, errors in law and of fact and manifest errors of assessment on the ground that the Commission concluded that the possibility of establishing the existence of an infringement was very limited, since the Commission:
  - did not seek to examine the question of the discriminatory character of the prices actually invoiced by reference to the services actually supplied and wrongly asserted that the preliminary investigation had not revealed any documentary or other evidence;
  - decided that the calculation method used by France Télécom to set its tariffs for access to the local loop was validated by the Autorité de régulation des communications électroniques et des postes (Electronic Communications and Postal Regulation Authority) (ARCEP) and considered that the fact that France Télécom had sent it erroneous information without seeking to correct it was irrelevant in view of the method used;
  - distorted the object of the eviction tests submitted by the applicant, which was to establish the effects of the practices complained of;
- disregard of the guarantees which apply to the investigation of complaints and to decisions to take no action in respect of abuse of a dominant position, the applicant (i) not having been given immediate access to adverse documents or to the documents in the file and (ii) not having been given sufficient time to submit its comments on those documents.

**Appeal brought on 20 September 2010 by Allen and Others against the Order of the European Union Civil Service Tribunal made on 13 July 2010 in case Allen and Others v Commission, F-103/09**

(Case T-433/10 P)

(2010/C 317/74)

*Language of the case: English*

#### Parties

*Appellant:* John Allen (Horspath, United Kingdom) and Others (represented by: K. Lasok, QC and B. Lask, Barrister)

*Other party to the appeal proceedings:* European Commission

#### Form of order sought by the appellant

- Allow the appeal;
- Quash the Order of the European Union Civil Service Tribunal (First Chamber), dated 13 July 2010 in case F-103/09;
- Dismiss the first and second plea of admissibility raised by the defendant; and
- Order the costs of this appeal to be paid by the defendant.

#### Pleas in law and main arguments

By the present appeal, the appellants seek to have set aside the Order of the European Union Civil Service Tribunal (EUCST) of 13 July 2010, delivered in case F-103/09 *Allen and Others v Commission*, by which the EUCST dismissed as inadmissible the action by which the appellants have sought damages and the annulment of a decision refusing to pay damages in respect of the loss suffered by each applicant as a result of the fact that they were not recruited as temporary servants of the Communities during the time they worked at the Joint European Torus (JET) Joint Undertaking.

In support of their appeal, the appellants submit that by concluding that an obligation to act within a reasonable period applied in the present context and, even if it did, by its approach to the duration and start point of that period, the EUCST acted contrary to the case law of the Court of Justice and to fundamental principles of European Union law.

**Action brought on 15 September 2010 — Hit Groep BV v European Commission**

(Case T-436/10)

(2010/C 317/75)

*Language of the case: Dutch*

#### Parties

*Applicant:* Hit Groep BV (Haarlem, Netherlands) (represented by: G. van der Wal, G. Oosterhuis and H. Albers, lawyers)

*Defendant:* European Commission