

JUDGMENT OF THE COURT OF FIRST INSTANCE (Second Chamber)
27 June 2001

Case T-166/99

Luis Fernando Andres de Dios and Others
v
Council of the European Union

(Decision 1999/307/EC – Integration of the Schengen Secretariat into the
General Secretariat of the Council – Action for annulment – Admissibility)

Full text in French II - 645

Full text in all languages in ECR, Section II

Application for: annulment of Council Decision 1999/307/EC of 1 May
1999 laying down the detailed arrangements for the
integration of the Schengen Secretariat into the General
Secretariat of the Council (OJ 1999 L 119, p. 49).

Held: The action is dismissed as inadmissible. The applicants are
ordered to bear their own costs and jointly and severally
to pay those of the Council. The intervener is ordered to
bear its own costs.

Summary

Actions for annulment – Natural or legal persons – Measures of direct and individual concern to them – Council decision laying down the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council – Action brought by persons employed in the Schengen Secretariat but not satisfying the conditions for appointment as officials in the General Secretariat of the Council – Inadmissibility
(Arts 230, fourth para., EC and 249 EC; Council Decision No 1999/307)

The term ‘decision’ in the fourth paragraph of Article 230 EC has the technical meaning employed in Article 249 EC. A decision as so defined is distinguished from an act of a legislative nature, and the criterion for distinguishing between them lies in the general application or otherwise of the measure in question. A measure cannot be regarded as constituting a decision if it applies to objectively determined situations and produces legal effects with respect to categories of persons envisaged generally and in the abstract. In this connection, the fact that a measure may have different specific effects for the individuals to whom it applies cannot deprive it of its general and abstract character. Moreover, the general application and hence the legislative nature of a measure are not affected by the fact that it is possible to determine the number or even the identity of the persons to whom it applies at a given moment, as long as it is established that it applies by virtue of an objective legal or factual situation, defined in relation to the objective of the measure.

Council Decision 1999/307 laying down the detailed arrangements for the integration of the Schengen Secretariat into the General Secretariat of the Council, despite being entitled a ‘decision’, is a measure of general application which applies to objectively determined situations.

Moreover, it cannot be considered that, in that it affects them by reason of certain attributes which are peculiar to them or by reason of circumstances which differentiate them from all other persons, that measure is of individual concern to persons who were indeed in the service of the Schengen Secretariat, long before its integration into the General Secretariat of the Council, but who do not satisfy the conditions set out in Article 3 to be appointed as officials in the General Secretariat of the Council.

(see paras 35-36, 40-41, 44, 56)

See: 16/62 and 17/62 *Confédération nationale des producteurs de fruits et légumes and Others v Council* [1962] ECR 487; 60/81 R and 190/81 R *IBM v Commission* [1981] ECR 1857, para. 9; 307/81 *Alusuisse v Council and Commission* [1982] ECR 3463, para. 9; C-168/93 *Gibraltar and Gibraltar Development v Council* [1992] ECR I-4009, para. 11; T-472/93 *Campo Ebro and Others v Council* [1995] ECR II-421, para. 36; T-107/94 *Kik v Council and Commission* [1995] ECR II-1717, para. 35; C-409/96 *Sveriges Betodlares Centralförening and Henrikson v Commission* [1997] ECR I-7531, para. 37; T-109/97 *Molkerei Grosbraunshain and Bene Nahrungsmittel v Commission* [1998] ECR II-3533, para. 52, and the case-law cited; T-114/99 *CSR PAMPRYL v Commission* [1999] ECR II-3331, para. 46