

# Case T-45/01

**Stephen Sanders and Others**

**v**

**Commission of the European Communities**

(Staff employed at the JET Joint Undertaking — Equal treatment — Failure to confer status of temporary servant — Article 152 EA — Reasonable time — Material damage sustained)

Judgment of the Court of First Instance (First Chamber), 5 October 2004 . . . II - 3320

## Summary of the Judgment

1. *Officials — Actions — Right of action — Persons seeking compensation by virtue of their employment by an EAEC Joint Undertaking outside the Conditions of Employment of Other Servants*  
(Art. 152 EA)

2. *Officials — Actions — Time-limits — Persons seeking compensation by virtue of their employment by an EAEC Joint Undertaking outside the Conditions of Employment of Other Servants — Action to be taken within a reasonable time — Point at which time starts to run and length of period*  
(Statute of the Court of Justice, Art. 46; Staff Regulations, Art. 90)
3. *Officials — Members of the temporary staff — Recruitment — Staff employed by the EAEC Joint European Torus (JET) Joint Undertaking — Discretion of the institutions — Limits*  
(Council Decision 78/471)
4. *Officials — Non-contractual liability of the institutions — Conditions — Unlawfulness — Damage — Causal link — Definition — Application in litigation under the Staff Regulations — Criteria*

1. An action for damages brought by persons who have worked for the Joint European Torus (JET) Joint Undertaking, set up under the EAEC Treaty, under an arrangement for the supply of manpower by outside companies which were in a contractual relationship with the JET, seeking compensation for the material damage they claim to have suffered as a result of the fact that, in breach of the provisions of the JET Statutes, they were not recruited as temporary servants covered by the Conditions of Employment of Other Servants, must be considered to fall within the category of disputes between the Community and its servants.

its servants has been given a wide definition by the case-law, as too narrow a view of the disputes between the Community and its servants would make for legal uncertainty by making potential applicants uncertain as to the legal channel to follow or giving them an artificial choice. Thirdly and finally, the applicants' choice of the procedure under Articles 90 and 91 of the Staff Regulations was not contested by the institutions which were parties to the dispute, which recognise that the dispute and the alleged unlawful act have their basis in the provisions of the Staff Regulations.

(see paras 41, 43-45, 49)

First, the legal problems raised by this action, as in actions where applicants claim the status of official or servant, relate to rights recognised by the Staff Regulations. Secondly, the notion of dispute between the Community and

2. Article 90(1) of the Staff Regulations lays down no time-limit for the submission

of a request. However, there is an obligation to act within a reasonable time in all cases where, in the absence of any statutory rule, the principles of legal certainty or protection of legitimate expectation preclude Community institutions and natural persons from acting without any time-limits, thereby threatening, *inter alia*, to undermine the stability of legal positions already acquired. In actions for damages liable to result in a financial burden on the Community, the obligation to submit a claim for compensation within a reasonable time derives also from a need to safeguard the public coffers which is specifically given expression, as regards actions for non-contractual liability, in the five-year limitation period laid down by Article 46 of the Statute of the Court.

The reasonableness of a period is to be appraised in the light of the circumstances specific to each case and, in particular, the importance of the case for the person concerned, its complexity and the conduct of the parties.

As regards an action for damages brought by persons who have worked for the Joint European Torus (JET) Joint Undertaking under an arrangement for the supply of manpower by outside companies which were in a contractual relationship with the JET, on the ground that they should have been recruited as temporary servants covered by the Con-

ditions of Employment of Other Servants, it must be considered, using Article 46 as a point of reference, that if the persons concerned considered that they had suffered unlawful discrimination, they should have made a request to the Community institution that it take steps to remedy that situation and bring it to an end within a reasonable time which cannot exceed five years from the time they became aware of the situation they complain of.

It is the conclusion of each initial annual contract, or each renewal thereof, which must be taken as that point in time, given the precarious employment situation of the persons concerned.

(see paras 58, 59, 67, 69, 72, 81, 83)

3. The institutions have a wide discretion in their choice of the most appropriate means for meeting their personnel requirements, particularly as regards

the recruitment of members of the temporary staff. That is particularly true with regard to the organisation and operation of joint undertakings.

companies supplying manpower or services with a view to avoiding the application of the provisions of the Staff Regulations. The functions which the Treaties assign to the Community institutions cannot be entrusted to outside companies but must be performed by staff covered by the provisions of the Staff Regulations.

The fact that the Statutes of the Joint European Torus (JET) joint undertaking provided that 'other personnel' of the project team were recruited under contracts for temporary servants did not oblige the Commission to recruit in that way if the project team did not need it to. The management of the Joint Undertaking thus had scope to assess the part to be made up, in the composition of the project team, by each of the two categories of staff mentioned in Article 8.1 of the Statutes (staff coming from the members of the Joint Undertaking and other personnel), its decision being put into effect by entry in the staff establishment appearing in the annual budget. It could equally well have recourse to companies supplying manpower or services to perform the various tasks involved in the operation of the Joint Undertaking but not constituting one of the functions which the Treaties assign to it, functions which the project team was responsible for carrying out under the authority of the Director of the project.

(see paras 113-115)

4. As regards the non-contractual liability of the Community and, in particular, in disputes concerning relations between the Community and its servants, there is liability for damages under Community law only if three conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered.

In order for it to be accepted that there is a causal link, evidence must be adduced that there is a direct causal nexus between the fault committed by the Community institution concerned and the injury pleaded.

However, the JET management could not have concluded such contracts with

However, in litigation under the Staff Regulations, the degree of certainty of the causal link required by the case-law is less where the unlawful act committed by a Community institution has definitely deprived a person, not necessarily of recruitment, to which the person concerned could never prove he had a right, but of a genuine chance of being recruited as an official or servant, resulting in material damage for the person concerned in the form of loss of income. Where it seems eminently probable, in the circumstances of the case, that, if it had abided by the law, the Community institution concerned

would have recruited the servant, the theoretical uncertainty as regards the outcome of a properly conducted recruitment procedure cannot preclude reparation for the material damage sustained by the person concerned in being deprived of the right to apply for a post covered by the Staff Regulations which he would have had every chance of securing.

(see paras 99, 149, 150)