

4. Infringement (in various respects) of Article 73 of Regulation No 1605 of 2002 and Article 32 of Council Regulation (EC) No 1260 of 21 June 1999 ⁽³⁾, in that the Commission unlawfully retained the credit owed to the Regione Siciliana substantially after the time when a lawful and unexceptionable application for payment had been made.

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- (¹) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 248 of 16.09.02, p. 1).
- (²) Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ 2002 L 357 of 31.12.02, p. 1).
- (³) Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161 of 26.06.1999, p. 1).

Action brought on 26 December 2003 by Kelvin William Stephens against Commission of the European Communities

(Case T-438/03)

(2004/C 47/74)

(Language of the case: French)

An action against the Commission of the European Communities was brought before the Court of First Instance of the

European Communities on 26 December 2003 by Kelvin William Stephens, residing in Brussels, represented by Nicolas Lhoëst, lawyer, with an address for service in Luxembourg.

The applicant claims that the Court should:

- Annul the decision of the appointing authority dated 23 December 2002, in so far as it did not award the applicant additional seniority and therefore reclassified him in Grade A6, Step 2, instead of Grade A6, Step 3;
- Annul, so far as necessary, the decision of the appointing authority of 4 September 2003, notified to the applicant on 17 September 2003, rejecting complaint R/155/03;
- Order the defendant to pay all the costs of the proceedings.

Pleas in law and main arguments

Following the judgments of the Court of Justice in Cases C-389/98 P and C-459/98 P, the Commission reconsidered under Article 31(2) of the Staff Regulations the classification of officials who used remedies within the meaning of Article 91 of the Staff Regulations. Following that exercise, the Commission adopted the contested decision in respect of the applicant.

In support of his action, the applicant claims, as regards additional seniority, that there has been a breach of the Commission decisions of 6 June 1973 and 1 September 1983 on the criteria applicable to appointment in grade and to classification in step on recruitment, a breach of Article 5(3) of the Staff Regulations, and of the principle of equal treatment and, last, a breach of Article 25(2) of the Staff Regulations and of the obligation to state reasons.