

In support of its action the applicant submits, first, that the Commission made several errors in law in attributing the applicant's practices, the materiality and classification of which are not disputed, to Elf Aquitaine. The Commission thus misinterpreted the rules governing a parent company's liability for practices carried out by a subsidiary in making a *de facto* irrebuttable presumption of accountability deriving from its majority shareholding in its subsidiary and consequently, in not showing how the parent company was actually involved in the practices in question. According to the applicant, this irrebuttable presumption infringes the principle of legal and commercial autonomy of the subsidiary, the principle of personal liability for breaches of competition law and the principle of non-discrimination between undertakings on the basis of their legal organisation. Moreover, the applicant claims that the Commission did not respect the essential procedural requirements in so far as no reasons were given at all for applying the irrebuttable presumption.

Second, the applicant submits that the fine imposed was excessive, disproportionate and discriminatory. In support of this submission it pleads infringement of the proportionality principle in determining the initial amount of the fine, in determining the factor applied to make the fine a sufficient deterrent and in determining the multiplying factor based on the duration of the breach.

In the alternative, the applicant submits that should Elf Aquitaine not be exonerated, its pleas regarding infringement of the proportionality principle are still well-founded. In addition, the applicant submits that the Commission took Arkema's turnover into account twice in its method of calculation, thus imposing a double penalty for the same fact.

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**Action brought on 20 April 2005 by Jean-Louis Giraudy against the Commission of the European Communities**

(Case T-169/05)

(2005/C 171/48)

(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 20 April 2005 by Jean-Louis Giraudy, residing in Paris, represented by Dominique Voillemot, lawyer.

The applicant claims that the Court should:

- annul the Commission's decision of 21 February 2005 inasmuch as it does not acknowledge the faults of the Press DG and rejects his complaint;
- declare that those faults have caused actual and quantifiable damage, and that there is a causal link between those faults and the damage;
- declare lawful, in consequence, financial compensation for the damage suffered by the applicant and fix the compensation for the non-material damage suffered at the sum of EUR 500 000;
- order the Commission to pay the costs.

*Pleas in law and main arguments*

At the material time, the applicant was Head of the Commission's Office in France. As a result of allegations made against him concerning supposed irregularities adversely affecting the European Union's budget, the European Anti-Fraud Office (the OLAF) carried out an operation at the headquarters of the Commission's Office on 18 November 2002. The next day the applicant was transferred to Brussels and forbidden all contact within the Commission or without.

The applicant also claims that a press release issued by the Commission on 21 November 2002 and widely circulated gave rise to considerable publicity unfavourable to him in the media. According to the applicant, the OLAF's report of 6 May 2003 concluded that the allegations against him were groundless.

By this action the applicant seeks to obtain compensation for the damage caused him by those acts. In support of his action he claims that he was transferred unlawfully, without justification and in breach of the presumption of innocence. He also claims that the Commission's spokesman did not observe the confidential nature of the inquiry and made public statements liable to damage his reputation. Finally, he claims that certain allegations concerning him were made by the Director General of the Press Directorate-General, of the flimsiness of which the latter must have been aware.