# Joined Cases 159 and 267/84, 12 and 264/85

## Alan Ainsworth and Others
## v
## Commission of the European Communities

Order of the Third Chamber of the Court, 1 April 1987 ..... 1579

Summary of the Order

*Procedure — Action declared admissible — Subsequent action — Same parties, object and submissions — Not admissible*
*(Rules of Procedure, Art. 92 (2))*

ORDER OF THE THIRD CHAMBER OF THE COURT
1 April 1987 *

In Joined Cases 159 and 267/84, 12 and 264/85

**Alan Ainsworth and Others**, represented by Jeremy Frederick Lever, Queen's Counsel, and Nicholas James Forwood, Barrister, instructed by Cole & Cole, Solicitors, Oxford (United Kingdom), with an address for service in Luxembourg at the Chambers of Elvinger and Hoss, 15 côte d'Eich,

applicants,

* Language of the Case: English.

**Commission of the European Communities**, represented by John Forman, a member of its Legal Department, acting as Agent, with an address for service at the office of Georges Kremlis, also a member of the Commission's Legal Department, Jean Monnet Building, Luxembourg,

defendant,

Application under Article 152 of the EAEC Treaty for the annulment of the decision of the Director of the Joint European Torus (JET) Joint Undertaking dated 1 November 1983 refusing to engage the applicants as temporary servants of the Commission of the EAEC;

in the alternative for a declaration that the Commission has infringed the provisions of the EAEC Treaty by failing to address to the applicants an offer of employment as temporary servants;

a declaration that the Community (EAEC or EEC) is liable to compensate the applicants for the loss suffered by reason of the unlawful recruitment procedures adopted by the Council and implemented by the Commission,

THE COURT (Third Chamber),

composed of: Y. Galmot, President of Chamber, U. Everling and J. C. Moitinho de Almeida, Judges,

Advocate General: J. Mischo
Registrar: P. Heim

after hearing the views of the Advocate General

makes the following

## Order

1 By applications lodged at the Court Registry on 25 June 1984, 12 November 1984, 18 January 1985 and 27 August 1985 Alan Ainsworth and Others brought actions under Article 152 of the EAEC Treaty and Article 91 of the Staff Regulations for:

(i) the annulment of the decision by which the Director of the Joint European Torus (JET) Joint Undertaking refused to engage the applicants as temporary servants of the Commission of the EAEC;

(ii) in the alternative, a declaration that the Commission has infringed the provisions of the EAEC Treaty by failing to address to the applicants an offer of employment as temporary servants;

(iii) a declaration that the Community (EAEC or EEC) is liable to compensate the applicants for the loss suffered by reason of the unlawful recruitment procedures adopted by the Council and implemented by the Commission.

2 Those applications were preceded by actions brought by the same applicants under the second paragraph of Article 146, the third paragraph of Article 148, Article 151 and the second paragraph of Article 188 of the EAEC Treaty and Article 178 and the second paragraph of Article 215 of the EEC Treaty. Those actions were declared admissible and gave rise, on their substance, to the judgment of 15 January 1987 in Joined Cases 271/83, 15, 36, 113, 158, 203/84 and 13/85 *Ainsworth and Others* v *Commission and Council* [1987] ECR 167.

3 In those circumstances, it is to be observed that the actions in Cases 159 and 267/84, 12 and 264/85, which were brought at a later date, are between the same parties, have the same purpose and are based on the same submissions as the actions which led to the judgment of 15 January 1987 in Joined Cases 271/83, 15, 36, 113, 203/84 and 13/85 *Ainsworth and Others* v *Commission and Council.*

4 The actions in Cases 159 and 267/84, 12 and 264/85 must therefore be dismissed as inadmissible pursuant to Article 92 (2) of the Rules of Procedure.

## Costs

Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under Article 70 of those Rules, costs incurred by the institutions in proceedings brought by servants of the Communities are to be borne by the institutions.

On those grounds,

THE COURT (Third Chamber)

hereby orders as follows:

**(1) The applications are dismissed as inadmissible;**

**(2) The parties are ordered to bear their own costs.**

Luxembourg, 1 April 1987.

P. Heim
Registrar

Y. Galmot
President of the Third Chamber