

The applicants claim that the Court should:

- Annul the list of officials promoted under the 2003 procedure, in so far as that list does not include the applicants' names, and, incidentally, the formal measures leading to that decision;
- Alternatively, annul the allocation of promotion points under the 2003 procedure in relation to the applicants;
- Order the Commission to pay the costs.

*Pleas in law and main arguments*

The applicants, Commission officials, were not promoted under the 2003 procedure. By their action, they question the system used by the Commission for that procedure, in so far as that system provides for the addition to merit and seniority points awarded to each official, 'reliquat' points awarded to officials on the list of officials eligible for promotion in the previous procedure but not promoted, as well as points awarded by the Directorates-General, special transitional points, points in the interests of the service and 'appeal' points awarded by the Promotions Committee. The applicants claim that by operating such a system the Commission did not, in breach of Article 45 of the Staff Regulations and the General Provisions for its implementation, consider the comparative merits of the officials eligible for promotion.

On the same basis, the applicants plead breach of the principle of non-discrimination, of the ban on arbitrary procedures, of the duty to state reasons, of the principle of legitimate expectations, of the rule 'patere legem quam ipse facit' and of the duty to have regard to the interests of officials.

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**Action brought on 22 November 2004 by Manuel Simões Dos Santos against the Office for Harmonisation in the Internal Market**

(Case T-435/04)

(2005/C 6/84)

(Language of the case: French)

An action against the Office for Harmonisation in the Internal Market was brought before the Court of First Instance of the European Communities on 22 November 2004, by Manuel Simões Dos Santos, residing in Alicante (Spain), represented by A.C. Carreras, lawyer.

The applicant claims that the Court should:

- Annul the decision of 7 July 2004 rejecting the applicant's complaint and the decisions of 15 December 2003 fixing the cumulative total of merit points awarded to the complainant and the decision of 12 December 2003 confirming that decision;
- Order the Commission to pay the costs.

*Pleas in law and main arguments*

The applicant in this case was promoted to Grade A5 in the 2002 promotion procedure. On that occasion, the Appointing Authority notified him of an outstanding balance of 54.19 points. Nevertheless, by letter of 15 December 2003 from the Department of Human Resources, he learnt that his points total at 30 September 2003 was only 1.5 points. It follows from that letter, which constitutes the contested decision, that that reduction in points is not the result of the conversion of the points awarded before the new system established by the Office's decision ADM-03-35, but of a complete cancellation thereof, in consequence of the application of the new rule for starting at zero after promotion, as laid down in that decision.

In support of his claims, the applicant first of all pleads breach of the principles of legality, legal certainty and non-retroactivity, in so far as there are no exceptional circumstances, in this case, which could justify the withdrawal of the balance of points already awarded to an official and to which he was entitled under the regime in force at the time.

The applicant also pleads breach of the principles of protection of legitimate expectations and of non-discrimination, and of the duty to state reasons.

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**Action brought on 26 October 2004 by Carlos Sánchez Ferriz against the Commission of the European Communities**

(Case T-436/04)

(2005/C 6/85)

(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 October 2004, by Carlos Sánchez Ferriz, residing in Brussels, represented by G. Bounéou and F. Frabetti, lawyers.