

The applicant states that he seeks equal treatment compared to officials recruited between June 2003 and end of April 2004. In support of his application, the applicant invokes the illegality of Article 12 of Annex XIII to the revised Staff Regulations. According to the applicant, that article violates the principle of equal treatment and of non discrimination, Article 31 of the revised Staff Regulations, Article 5 of the revised Staff Regulations together with the principle of equal treatment and non discrimination, the principle of equivalence of position and grades, Article 7 (1) of the Staff Regulations and Annex IA to the Staff Regulations, as well as, finally, the principle of legal certainty, the principle of non retroactivity and the applicant's acquired rights and his legitimate expectation. The applicant furthermore submits that Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the Conditions of Employment of other servants of the European Communities <sup>(1)</sup> infringes Article 10 of the Staff Regulations.

The applicant also invokes a violation of the principle of good administration, the principle of due care, the principle of transparency, the principle of good faith and the principle of equal treatment and non discrimination.

<sup>(1)</sup> OJ L 124, p. 1

**Action brought on 26 July 2005 by Arcangelo Milella and Another against the Commission of the European Communities**

(Case T-289/05)

(2005/C 229/76)

(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 July 2005 by Arcangelo Milella, resident in Niederanven (Luxembourg), and Delfina Campanella, resident in Luxembourg, represented by Marc-Albert Lucas, lawyer.

The applicants claim that the Court should:

- set aside the decision of 18 April 2005 of the Director-General for Personnel and Administration of the Commission in so far as it specifies that the d'Hondt rule is a method for allocating seats of representatives of the Local

Staff Committee for Luxembourg (LCSL) on the Central Staff Committee (CSC) in accordance with the proportionality principle, and requests the LCSL to bear that rule in mind for the purpose of adopting a new decision as regards the appointment of its members to the CSC;

- establish the illegality of the decisions of 26 April and 10 May 2005 of the Local Staff Committee for Luxembourg allocating its representatives to the Central Staff Committee in so far as they allocate five seats to list No 2 and two seats to list No 1 in accordance with the d'Hondt method, and not four seats to list No 2 and three seats to list No 1 in accordance with the largest remainder method;
- annul the decision of 11 May 2005 of the Director-General for Personnel and Administration confirming that the new appointments of its representatives to the Central Staff Committee made by the Local Staff Committee for Luxembourg on 26 April and 10 May 2005 had been properly effected;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The dispute concerns the appointment of representatives of the Local Staff Committee of the Commission in Luxembourg (LCSL) to the Central Staff Committee of the Commission (CSC) following the elections of 24 November 2004. By letter of 18 April 2005, the Director-General of the DG ADMIN of the Commission pointed out to the chairpersons of the LCSL and CSC that he considered the 'd'Hondt rule', which is a mathematical method chosen to divide the seats within the CSC amongst the lists put forward for the elections, to be in accordance with the proportionality principle. However, by that same letter, the Director annulled, on separate grounds, the appointments of the representatives to the CSC. Following that letter, the LCSL, on 26 April 2005, appointed new representatives, in accordance with the d'Hondt method.

By letter of 11 May 2005, the Director-General of the DG ADMIN confirmed that he considered those appointments to be in order.

The applicants, officials of the European Commission posted in Luxembourg, contend that those decisions should be annulled. They claim that there has been an infringement of the final paragraph of Article 14 of the Regulations of 27 April 1988 on the composition and functioning of the Staff Committee adopted by the Commission, and of the rule that the allocation of seats within the CSC should be in proportion to the allocation of seats on the LCSL and of the principle that the CSC be representative. The applicants allege that a different method of seat allocation, namely the largest remainder method, should have been adopted and would have resulted in a more representative allocation.

The applicants also contend that the LCSL misused its powers. They submit that the majority of the LCSL sought artificially to increase its representation to the detriment of list No 1, and the Appointing Authority erred in law and committed a manifest error of assessment in approving the use of the d'Hondt method.

The applicants also claim that the Appointing Authority infringed the principle of equal treatment in so far as it departed from its previous practice, under which it considered the largest remainder method to be the only method capable of guaranteeing proportionality.

Finally, the applicants allege that the Appointing Authority infringed the third paragraph of Article 1 of Annex II to the Staff Regulations and Article 16(1) and (2) of the Regulations of the LCSL on the ground that the Appointing Authority forced the LCSL to choose the d'Hondt method or, at least, allowed it to encroach upon the competence of the General Staff Assembly, which is the only body competent to decide upon the applicable method.

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**Action brought on 25 July 2005 by Mohammad Reza Fardoom and Michael Ashbrook against the Commission of the European Communities**

(Case T-291/05)

(2005/C 229/77)

(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 25 July 2005 by Mohammed Reza Fardoom, resident in Roodt-sur-Syre (Luxembourg), and Michael Ashbrook, resident in Strassen (Luxembourg), represented by Gilles Bounéou and Frédéric Frabetti, lawyers, with an address for service in Luxembourg.

The applicants claim that the Court should:

- set aside the decisions of the Head of Unit for 'Social Dialogue', adopted on 4 November 2004 and refusing the applicants travel orders, applied for on 9 September 2004, in order to take part in the meeting of 13 September 2004 with a member of the Commission;
- order the defendant to pay the costs.

*Pleas in law and main arguments*

The applicants had been invited, as representatives of a trade union organisation, to a meeting held on 13 September 2004 with a member of the Commission. In order to take part in that meeting, the applicants had, beforehand, applied for travel orders. Those applications were not approved by their immediate superior until 41 days later. The authorising officer rejected those applications by reason of that delay.

The applicants claim that the latter decision should be annulled. In support of their action, they contend that there has been an infringement of Article 24a of the Staff Regulations, of the freedom to belong to a trade union, of the principles of equal treatment and non-discrimination, and that the process was arbitrary. In that context, the applicants submit that they lodged their requests within the appropriate time-limit and that they should not be held responsible for the fact that they were approved too late. The applicants also contend that the missions were requested without any expenses and that, accordingly, it was not necessary subsequently to involve the budget of the institution.

The applicants also allege that there has been an infringement of the principle that reasons must be given and of the duty of care owed by the Commission.

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**Action brought on 26 July 2005 by Maria Johansen against the Court of Auditors of the European Communities**

(Case T-292/05)

(2005/C 229/78)

(Language of the case: French)

An action against the Court of Auditors of the European Communities was brought before the Court of First Instance of the European Communities on 26 July 2005 by Maria Johansen, resident in Luxembourg, represented by Stéphane Rodrigues and Alice Jaume, lawyers.

The applicant claims that the Court should:

- primarily, set aside the decision of the Appointing Authority of 21 April 2005 rejecting the applicant's complaint, adopted together with the Appointment Authority's appointment decision of 27 October 2004, in so far as it fixes her grade, in accordance with Article 12(3) of Annex XIII to the Staff Regulations, and her step in accordance with the current Article 32 of the Staff Regulations;