

**Pleas in law and main arguments**

The applicant, placed on the reserve list of competition EUR/A/155/2000 <sup>(1)</sup> for the establishment of a list of suitable candidates for grades A7/A6, was employed after 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>(2)</sup> came into force, and established in grade AD6/2.

In support of his application, the applicant pleads two grounds.

In connection with the first plea, he submits that the decision of 12 June 2006 is vitiated by a conflict between, on the one hand, the reference in the preamble to Article 31 of the Staff Regulations, according to which candidates are to be appointed to the grade of the function group set out in the notice of the competition, and, on the other hand, the operative part of that decision which establishes him in grade AD6/2.

In connection with the second plea, he claims that, in any event, the decision at issue is unlawful because it is founded on an implicit legal basis (Articles 12 and 13 of Annex XIII to the Staff Regulations) which is unlawful under the following heads:

- breach of the principles of legal certainty and the protection of legitimate expectations;
- breach of the principle of non-discrimination and equal treatment;
- breach of the principle of reasonableness, considering that the application of the new body of rules depends on a circumstance which is absolutely fortuitous, such as that of being recruited before or after a particular date, without any other reason justifying such a rule;
- breach of the principle of sound administration;
- in the alternative, infringement of the obligation to state the reasons on which Community measures are based laid down in Article 251 EC.

<sup>(1)</sup> OJ C 147 A of 25.5.2000, p. 10.

<sup>(2)</sup> OJ L 124 of 27.4.2004, p. 1.

**Action brought on 2 May 2007 — Fernandez García and García Rato v Court of Justice**

(Case F-41/07)

(2007/C 140/74)

*Language of the case: French*

**Parties**

*Applicants:* Brigida Fernandez García (Luxembourg, Luxembourg) and Carolina García Rato (Luxembourg, Luxembourg) (represented by: S. Orlandi, A. Coolen, J.-N. Louis and E. Marchal, lawyers)

*Defendant:* Court of Justice

**Form of order sought**

The applicants claim that the Tribunal should:

- annul the decisions to appoint the applicants as officials of the European Communities in so far as they fix their grade of recruitment under Article 13 of Annex XIII to the Staff Regulations;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicants, successful candidates in competition CJ/LA/25 <sup>(1)</sup>, the notice of which was published before 1 May 2004, were recruited after the entry into force of 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>(2)</sup>.

In their action, the applicants claim, first, that the contested decisions misapplied the legal framework established by the notice of competition. Under Article 13 of Annex XIII to the Staff Regulations, they were recruited in a grade lower than that indicated in the notice of competition.

The applicants also plead that the contested decisions infringe Articles 5, 29 and 31 of the Staff Regulations, as well as the principle of equal treatment and non-discrimination. The grade and step of successful candidates in the same competition or in competitions at the same level was fixed at different levels depending on whether they were recruited before or after the entry into force of Regulation No 723/2004.

In addition, the applicants plead breach of the principle of the protection of legitimate expectations, since they legitimately expected to be recruited in the grade indicated in the notice of the competition for filling the posts for which they applied.

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<sup>(1)</sup> OJ C 182 A of 31.07.2002, p. 8.

<sup>(2)</sup> OJ L 124 of 27.04.2004, p. 1.

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**Action brought on 10 May 2007 — Prieto v Parliament**

**(Case F-42/07)**

(2007/C 140/75)

*Language of the case: French*

**Parties**

*Applicant:* Antonio Prieto (Bousval, Belgium) (represented by: E. Boigelot, lawyer)

*Defendant:* European Parliament

**Form of order sought**

The applicant claims that the Tribunal should:

- annul the European Parliament's decision of 9 June 2006 to appoint the applicant as a probationary official in step 3 of Grade AST 2;
- order the defendant to pay the costs.

**Pleas in law and main arguments**

The applicant, a successful candidate in internal competition C/348 for Grades C5-4, was a member of the Commission's temporary staff in Grade AST 3 (formerly Grade C4) when he was appointed as a probationary official in Grade AST 2.

In support of his action, the applicant claims, first, that the decision to appoint him as an official in a grade and step lower than that which was his when he was a member of the temporary staff infringes Article 5(4) of Annex XIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

The applicant also pleads breach of the principle of equal treatment and non-discrimination, on the ground that only the successful candidates in the competition in question who were previously, as members of the temporary staff, in category D were able to retain their former more advantageous grade and step when they were appointed as officials.

The applicant claims, finally, that the contested decision also infringes the principles of legal certainty, the protection of legitimate expectations, proper administration and of sound management.

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