

JUDGMENT OF THE COURT (THIRD CHAMBER)
24 MARCH 1983 ¹

Franco Colussi
v European Parliament

(Official — Annulment of a decision to promote an official)

Case 298/81

1. *Officials — Recruitment — Procedures — Choice — Discretion of the administration (Staff Regulations of Officials, Art. 29 (1))*
2. *Officials — Promotion — Consideration of comparative merits — Criteria — Interests of the service — Personal merits of candidates — Discretion of appointing authority — Review by the Court — Limits (Staff Regulations of Officials, Art. 45)*

1. Article 29 (1) of the Staff Regulations provides for various possible procedures for the filling of vacant posts, the first of which is a consideration of the possibilities of promotion or transfer within the institution. It is for the appointing authority to assess whether it is possible to fill the vacant post by means of that first procedure or whether it is appropriate to proceed to the second procedure envisaged, namely the organization of a competition internal to the institution. Since promotions or transfers within the institution are permitted by the Staff Regulations, it follows that the appointing authority has a wide discretion in that respect.

2. In order to evaluate the interests of the service together with the merits

which must be taken into account in the context of the decision provided for by Article 45 of the Staff Regulations in a matter of promotion, the appointing authority has a wide margin of discretion and, in that sphere, the Court must restrict itself to the question whether, regard being had to the methods and means which may have led to the assessment made by the administration, the latter remained within bounds which are not open to criticism and did not use its power in a manifestly incorrect manner.

Where officials who are eligible for promotion have lengthy experience, the appointing authority is entitled to

¹ — Language of the Case: French.

take into account, in order to assess their qualifications for the post in question, in addition to the number and the nature of the degrees held by them, the competence and efficiency which they have shown in the service. Moreover, it cannot be suggested that it is a misuse of the power of

discretion to take into account, in conjunction with other factors, the age of candidates and their seniority in the grade or service. Indeed, the qualifications and merits of the candidates being equal, those matters may even constitute a decisive factor in the appointing authority's decision.

In Case 298/81

FRANCO COLUSSI, an official of the European Parliament, represented by Marcel Slusny of the Brussels Bar, with an address for service in Luxembourg at the applicant's residence, 36 Rue de Wiltz,

applicant,

v

EUROPEAN PARLIAMENT, represented by the Director of Personnel and Social Affairs, Martin Schmidt, acting as Agent, assisted by Alex Bonn of the Luxembourg Bar, with an address for service in Luxembourg at the Chambers of Mr Bonn, 22 Côte d'Eich,

defendant,

APPLICATION for the annulment of a decision to promote an official,

THE COURT (Third Chamber)

composed of: U. Everling, President of Chamber, Lord Mackenzie Stuart and Y. Galmot, Judges,

Advocate General: S. Rozès

Registrar: J. A. Pompe, Deputy Registrar

gives the following