JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
14 July 1994

Case T-534/93

Arlette Grynberg and Eileen Hall
v
Commission of the European Communities

(Officials – Staff Committee – Electoral procedure – Allocation of seats – Provisional classification of those elected – Replacement of those elected)

Application for: annulment of the results of elections to a local Staff Committee of the Commission in so far as the applicants, who had initially been elected, were replaced by other candidates.

Decision: Application dismissed.

Abstract of the Judgment

Elections to fill the 27 seats of the Staff Committee of the Commission in Brussels are held under rules which provide that the candidatures put forward by the trade unions and staff associations are to appear in the form of 'lists each containing not

more than 27 linked candidates and alternate candidates'. The voters have to vote either for a single list (the 'heads of list' vote) or for a maximum of 27 candidates or alternate candidates chosen from one or more lists (the 'preferential' or 'split' vote).

Under Article 11 of the rules:

'(a) Allocation of seats between "heads of list" votes and "split" votes shall be effected in proportion to the number of ballot papers showing

– a "head of list" vote,

– a "split" vote.

(...)

(c) Allocation of seats under the "split" vote shall be effected in proportion to the total number of votes cast for the candidates of each list.

In each list, the "split" vote seats shall be allocated to candidates not elected by "heads of list" votes and who have obtained the highest number of votes.'

Article 12(a) provides: 'A provisional classification of elected persons is thus established for each list. If those persons do not include any representative of a given category or service or any representative of other servants, the candidate from the unrepresented category or service or from amongst other servants who has obtained the highest number of preferential votes shall, in the list for which he was a candidate, take the place of the last-placed candidate amongst those provisionally classified as elected.'

Applying Article 11(a), the Electoral Office calculated that, of the 27 seats to be filled, 11 were to be filled by the 'heads of list' method and 16 by the 'split' vote method.

When it went on to establish the provisional classification of elected persons, the Electoral Office found, first, in relation to the 'heads of list' vote, that List No 3 (European Public Service Union) was entitled to four of the eleven seats, which were allocated to the first four pairs of candidates on the list in the order of their appearance on the list determined by the European Public Service Union.

The Electoral Office then found that, by virtue of the number of 'split' votes it had received, List No 3 was entitled to four of the sixteen seats to be filled by the 'split vote' method. Since, among the first four pairs of candidates, a pair had already been elected by the 'heads of list' method, the Electoral Office held, applying the second subparagraph of Article 11(c), that the pair comprising the applicants (753 votes) had been elected, since they followed in the order of 'split' votes on the same list.

Being obliged, under the second sentence of Article 12(a), to replace an elected candidate in order to ensure the missing representation of 'local staff', the Electoral Office held a candidate belonging to List No 3 who represented that category and had, together with his alternate candidate, obtained 556 'split' votes to have been elected, and it eliminated, within that same List No 3, the pair comprising the applicants.

In a note addressed to the Electoral Office, the candidate at the head of List No 3 maintained that the replacement of the applicants was based on an erroneous interpretation of Article 12 on the ground that it was the pair elected with the lowest number of votes within a single list, taking all candidates together, which had to be replaced by the pair representing the missing staff category.

The Chairman of the Electoral Office confirmed to the relevant director general the interpretation given by the office, and that interpretation was endorsed by the Commission's Legal Service on a reference from the director general. By a note of 7 January 1993, the director general confirmed the interpretation that had been adopted.

Mrs Grynberg, the first applicant, retired on 1 January 1993. On 7 April, the two applicants submitted a complaint, which did not receive an express reply, alleging a breach of Article 12 of the election rules and of the principle of the protection of legitimate expectations.

Admissibility

The existence of an act adversely affecting officials

The Court points out that, since the jurisdiction of the Community judicature in electoral disputes is based on the provisions of the Staff Regulations relating to actions by officials, its function of judicial review is carried out in connection with actions brought against the institution concerned regarding the acts or omissions of the appointing authority arising out of the exercise of its supervisory function (paragraph 20).

See: 146 and 431/85 *Diezler* v *ESC* [1987] ECR 4283, para. 5

The Court finds that the director general's note dated 7 January 1993 constitutes a decision taken by the institution in the performance of its duty to ensure the regularity of elections to staff representative bodies. Inasmuch as it mentions the pair of candidates comprised by the applicants by name and states that that pair is removed from the list of elected persons, that note produces binding legal consequences that are likely directly and immediately to affect the applicants' interests by significantly changing their legal situation and thus constitutes an act adversely affecting officials (paragraphs 21 and 22).

See: T-28/89 *Maindiaux* v *ESC* [1990] ECR II-59, para. 32; T-6/93 *Pérez Jiménez* v *Commission* [1994] ECR-SC II-497, para. 34

Mrs Grynberg's legal interest in bringing proceedings

The Court notes that, in matters concerning electoral disputes, an official has sufficient interest to make his action admissible merely by virtue of being entitled to vote. It recognizes that capacity in Mrs Grynberg, since she was entitled to vote in the elections in question and is relying on that capacity to request judicial review of their result, without having been deprived of her interest in bringing proceedings by the mere fact that, owing to her retirement, she ceased to be entitled to vote before bringing her action. Until the expiry of the time-limits laid down in Articles 90 and 91 of the Staff Regulations, any voter who was entitled to participate in elections retains a legitimate interest in seeing his right to vote take effect in conformity with the relevant provisions (paragraphs 29 and 30).

See: *Diezler* v *ECS*, cited above, para. 9

Substance

The plea in law alleging breach of Article 12 of the election rules

In the Court's opinion, a literal and systematic interpretation of the relevant provisions leads to the conclusion that the last-placed candidate amongst those on a list who have been provisionally classified as elected, for the purposes of Article 12(a) of the election rules, is the one who belongs to the group of candidates elected by the 'split vote' method (paragraph 41).

The first operation to be undertaken at the close of the poll consists of allocating all the seats to be filled by reference to the total number of 'heads of list' vote ballot papers on the one hand and the total number of 'split vote' ballot papers on the other (paragraph 42).

Moreover, inasmuch as the replacement candidate is designated under the election rules by reference to the number of 'split' votes he has received, it is consistent with the way the system is structured that the candidate who is removed should also be determined by reference to 'split' votes only, leaving out of account 'split' votes obtained by persons elected under the 'heads of list' system (paragraph 43).

Furthermore, such an interpretation respects the allocation of the seats to be filled between the 'heads of list' method and the 'split vote' method respectively. If the replacement operation were capable of affecting all the names on the list, the initial allocation of the number of seats carried out by reference to the two polling methods risked being altered retrospectively, thereby affecting the coherence of the voting system as a whole and the will expressed by the voters (paragraph 44).

Contrary to what the applicants allege, the principle of the equal representative value of votes has not been infringed since the total number of elected persons belonging to List No 3 remains identical, irrespective of whether it is one pair of candidates or the other which appears on the definitive list of elected persons (paragraph 46).

The plea in law alleging breach of the principle of the protection of legitimate expectation in the relevant provisions being interpreted differently

The Court points out that the right to claim protection of legitimate expectations extends to any individual who is in a situation in which it appears that the Community administration, by giving him precise assurances, has led him to entertain reasonable expectations. No breach of any legitimate expectation can be established in this case (paragraphs 51 and 52).

See: T-3/92 *Latham* v *Commission* [1994] ECR-SC II-83, para. 58; T-465/93 *Murgia Messapica* v *Commission* [1994] ECR II-361, para. 67

In any event, the plea effectively claims protection for an erroneous interpretation of the election rules. Promises which do not take account of the specific rules governing a given administrative situation cannot give rise to legitimate expectations on the part of the persons to whom they are addressed (paragraphs 52 and 53).

See: C-313/90 *CIRFS* v *Commission* [1993] ECR I-1125, para. 45; T-20/91 *Holtbecker* v *Commission* [1992] ECR II-2599, para. 54; *Latham* v *Commission*, cited above, para. 58

Plea in law alleging breach of Article 25 of the Staff Regulations in that the note of 7 January 1993 from the relevant director general did not state reasons

Although this plea was not raised in the complaint, the Court points out that the Community judicature is under a duty to inquire of its own motion whether the Commission has satisfied its obligation to state reasons for the contested decision. Since such an examination may take place at any stage of the proceedings, an applicant may not be time-barred from relying on such a plea merely because he did not raise it in his complaint (paragraph 59).

As to the substance, the Court finds that the applicants were in a position to defend their point of view effectively and that the Court was in a position to review the legality of the contested decision (paragraph 60).

Operative part:

The application is dismissed.