



Reports of Cases

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
30 September 2010

Case F-107/05

Gergely Toth
v
European Commission

(Civil service — Member of the temporary staff — Classification in grade — Grades laid down in the call for applications — Amendment of the rules governing classification of members of the temporary staff after publication of the call for applications — Classification in grade under the new, less favourable rules — Transitional provisions — Application by analogy — Article 12(3) of Annex XIII to the Staff Regulations — Proportionality — Principle of good administration)

Application: brought under Articles 236 EC and 152 EA, in which Mr Toth seeks, principally, annulment, first, of the Commission's decision of 20 July 2005 rejecting his complaint and, second, of the contract which he signed on 17 January 2005 in so far as it fixes his grade; alternatively, an order that the Commission pay him compensation.

Held: The Commission's decision classifying the applicant at grade A*6, step 2, contained in Article 3 of the temporary staff contract signed on 17 January 2005, is annulled. The remainder of the application is dismissed. The Commission is ordered to bear its own costs and to pay the costs of the applicant. The Council of the European Union, intervener for the Commission, is ordered to bear its own costs.

Summary

1. Officials — Members of the temporary staff — Recruitment — Classification in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional provisions on classification in grade (Staff Regulations, Art. 5(1) to (4); Annex XIII, Art. 12(3); Conditions of Employment of Other Servants, Art. 10, second para.; Council Regulation No 723/2004)

2. European Union law — Transitional provisions — Restrictive interpretation

3. Officials — Principles — Principle of sound administration — Scope

1. In the absence of any transitional provision in Regulation No 723/2004 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants, in order to determine the classification in grade of members of the temporary staff recruited after that regulation came into

force on 1 May 2004 on the basis of calls for applications published before that date, and in the absence of any internal provisions applicable for that purpose, only the second paragraph of Article 10 of the Conditions of Employment may form the basis for that classification.

It is apparent from Article 10 of the Conditions of Employment that the administration has a discretion to fix the grade of members of the temporary staff. In the absence of any internal provisions on the subject, that discretion is circumscribed only by the obligation to employ those staff in the grade announced in the call for applications and by the need to observe the structure of the categories or function groups laid down by Article 5(1) to (4) of the Staff Regulations.

That being so, and where the grade announced in the call for applications has been repealed, an institution may reasonably be guided by the solution adopted by the Community legislature when adopting Annex XIII to the Staff Regulations and apply by analogy Article 12(3) of that annex, which relates to the classification of officials included in a list of suitable candidates before 1 May 2006 and recruited between 1 May 2004 and 30 April 2006.

(see paras 55, 58-59, 69, 73-74, 76)

See:

F-21/06 *Da Silva v Commission* [2007] ECR-SC I-A-1-179 and II-A-1-981, paras 64, 68 and 79

2. A transitional provision must, in general, be interpreted restrictively, which is incompatible a priori with an application by analogy. The restrictive nature of the interpretation is justified by the fact that transitional provisions derogate from permanent rules and principles which would be directly applicable to the situations in question if those provisions did not exist.

In the absence of permanent provisions, the administration may, however, apply Article 12(3) of Annex XIII to the Staff Regulations by analogy without disregarding its transitional nature.

(see paras 71-74)

See:

77/82 *Peskeloglou* [1983] ECR 1085, paras 11 to 15; C-267/5 and C-268/95 *Merck and Beecham* [1996] ECR I-6285, paras 23 and 24; C-462/05 *Commission v Portugal* [2008] ECR I-4183, paras 53 and 54

T-252/97 *Dürbeck v Commission* [2000] ECR II-3031, paras 66 and 70

Da Silva v Commission, paras 64, 68 and 79

3. In accordance with the principle of sound administration, the administration is obliged, where it takes a decision on the situation of an official, to take into consideration all the factors likely to determine its decision and, on that basis, infringement of that principle is capable of leading to the annulment of the contested decision.

(see para. 85)

See:

T-11/03 *Afari v ECB* [2004] ECR-SC I-A-65 and II-267, para. 42

F-99/06 *López Teruel v OHIM* [2007] ECR-SC I-A-1-147 and II-A-1-797, para. 92