

Case C-198/07 P

Donal Gordon

v

Commission of the European Communities

(Appeal — Career development report — Action for annulment — Legal interest in bringing proceedings — Official in a state of total permanent invalidity)

Opinion of Advocate General Bot delivered on 16 October 2008 I - 10704
Judgment of the Court (Fourth Chamber), 22 December 2008. I - 10731

Summary of the Judgment

1. *Officials — Actions — Interest in bringing proceedings*
(*Staff Regulations, Arts 53, 78, 90 and 91; Annex VIII, Arts 13 to 16*)
2. *Officials — Reports procedure — Joint Evaluation Committee*
(*Staff Regulations, Art. 43*)

1. An official who is retired on the ground of total permanent invalidity pursuant to Articles 53 and 78 of the Staff Regulations after lodging an action against his career development report nevertheless retains an interest in challenging that report.

In the first place, irrespective of its future usefulness, the career development report constitutes written, formal evidence of the quality of the work carried out by the official. Such an appraisal does not merely describe the tasks performed during the relevant period, but also includes an assessment of the personal qualities shown by the individual assessed in the conduct of his professional life. Therefore, every official has a right to have his work recognised by means of an appraisal carried out in a just and equitable manner. Consequently, in accordance with the right to effective judicial protection, officials must in any event be acknowledged as having the right to challenge a career development report on account of its content or because it has not been drawn up in accordance with the rules laid down by the Staff Regulations.

In the second place, while it is true that an official who is recognised by the Invalidity Committee as being in a state of total permanent incapacity is automatically retired pursuant to Articles 53 and 78 of

the Staff Regulations, the situation of that official is distinct from that of an official who has reached the age of retirement, or who has resigned or been dismissed, because it is reversible. An official in a state of total permanent invalidity may one day resume his duties within a Community institution, given the wording of Article 16 of Annex VIII to the Staff Regulations. In that regard, the general provision of Article 53 of the Staff Regulations must be read in conjunction with the specific provisions of Articles 13 to 15 of Annex VIII to the Staff Regulations. The employment of an official who is declared to be in a state of invalidity is merely suspended, since the evolution of his position within the institutions is subject to the continued existence of the conditions which justified that invalidity, which can be reviewed at regular intervals.

Given that he may be reinstated in the institutions, an official who is in a state of total permanent invalidity has a right comparable to that of a serving official to have his career development report drawn up fairly, objectively and in accordance with normal reporting standards. In the event of reinstatement, that report would be useful for the official's development within his service or the Community institutions. It would constitute tangible, formal evidence of his ability and experi-

ence within the institution, upon which he would be able to rely. It would also enable superiors to compare the merits of candidates for possible promotion or transfer.

(see paras 44-51)

2. In the context of the reporting system established by the Commission, the fact that the Joint Evaluation Committee does not take a view on the content of a career development report, although a challenge has been laid before it, constitutes a substantive infringement of the procedure

for drawing up that report which adversely affects the rights of the official. Where a complaint is brought before that committee, examination of the career development report is an essential procedural requirement and not a mere formality, since that committee is the only body involved in the reporting process which includes staff representatives and, moreover, its opinions have to be taken into consideration by the appeal assessor.

(see paras 71-74)