

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Third Chamber)
16 April 2008

Case F-73/07

Frantisek Doktor
v
Council of the European Union

(Civil service — Officials — Recruitment — Dismissal at the end of the
probationary period)

Full text in the language of the case (French) II-A-1 - 479

Application: brought under Articles 236 EC and 152 EA, in which Mr Doktor seeks in particular annulment of the Council's decision of 24 October 2006 dismissing him at the end of his probationary period, and an order for the institution to compensate him for the professional, financial and non-material damage caused by his dismissal.

Held: The action is dismissed. Each party is to bear its own costs.

Summary

*1. Officials — Recruitment — Probationary period — Purpose
(Staff Regulations, Art. 34)*

*2. Officials — Administration's duty to have regard for the interests of officials — Principle of sound administration
(Staff Regulations, Art. 34(3))*

*3. Officials — Recruitment — Probationary period — Personal integration plan — Intermediate probationary report — Report at the end of the probationary period — Drawn up late
(Staff Regulations, Art. 34)*

*4. Officials — Equal treatment — Established officials and probationary officials
(Staff Regulations, Art. 34)*

1. Although the probationary period provided for in Article 34 of the Staff Regulations cannot be assimilated to a training period, it is still imperative that the official be given the opportunity, during this period, to demonstrate his qualities. This requirement meets the requirements of proper administration and equal treatment, and the duty to have regard for the interests of officials, which reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and civil servants. It means in practice that the probationary official must not only be accorded appropriate material conditions but must also be given appropriate

instructions and advice in the light of the nature of the duties performed in order to enable him to adapt to the specific needs of the post which he occupies.

(see para. 31)

See:

10/55 *Mirossevich v High Authority* [1956] ECR 333, 342 et seq.; 3/84 *Patrinos v ESC* [1985] ECR 1421, paras 20 and 21

T-96/95 *Rozand-Lambiotte v Commission* [1997] ECR-SC I-A-35 and II-97, para. 95

F-112/06 *Krcova v Court of Justice* [2007] ECR-SC I-A-1-305 and II-A-1-1723, para. 48

2. The duty of the administration to have regard for the interests of its officials reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and civil servants. That duty, together with the principle of proper administration, implies in particular that when the authority takes a decision concerning the situation of an official, it should take into consideration all the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also those of the official concerned. It is clear from the third subparagraph of Article 34(3) of the Staff Regulations that the administration may, but is not under an obligation to, assign a probationary official to another department if it decides to extend his probationary period. If the administration's duty to have regard for the interests of its officials had the effect of transforming that option into an obligation, that duty would alter the balance of rights and obligations established by the Staff Regulations in

the relationship between the official authority and civil servants, whereas its purpose is to reflect that balance.

(see paras 41-42)

See:

417/85 *Maurissen v Court of Auditors* [1987] ECR 551, para. 12

3. A procedural irregularity cannot invalidate an act unless it is established that, without that irregularity, the content of the act might have been different. That is not true where there has been a delay of several weeks in drawing up a probationary official's personal integration plan, or where the intermediate staff report, which in any case has no legal effect and which the Staff Regulations do not require the appointing authority to draw up, has allegedly been issued one and a half months late, or where there has been a delay in drawing up the report at the end of the probationary period, since such an irregularity in respect of the express requirements of the Staff Regulations, however regrettable, is not capable of calling into question the validity of the report.

(see paras 47, 48, 50, 51, 53)

See:

46/72 *De Greef v Commission* [1973] ECR 543, paras. 21 to 25; 98/81 *Munk v Commission* [1982] ECR 1155, para. 8; *Patrinos v ESC*, para. 19

T-24/01 *Staelen v Parliament* [2003] ECR-SC I-A-79 and II-423, para. 53

4. The principle of equal treatment means that two groups of persons whose factual and legal situations are not materially different must not be treated differently. The legal and factual situations of established officials and probationary officials are fundamentally different. In particular, the situation in practice of a probationary official is not comparable to that of an official who has been in service for a number of years. Moreover, the staff reports of established officials and the end-of-probationary-period report of probationary officials have distinct functions, the end-of-probationary-period report being principally intended to evaluate the probationary official's fitness to carry out the work corresponding to his post and to be appointed an official, whereas the primary function of the staff report is to provide the administration with periodic information, which is as complete as possible, on the performance of their duties by officials.

(see para. 86)

See:

T-326/94 *Dimitriadis v Court of Auditors* [1996] ECR-SC I-A-217 and II-613, paras 83 and 84; T-200/03 and T-313/03 *V v Commission* [2006] ECR-SC I-A-2-15 and II-A-2-57, para. 176