



## Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL  
(First Chamber)  
2 December 2014

Case F-110/13

**Nunzio Migliore**  
v  
**European Commission**

(Civil service — Officials — Promotion — Certification procedure — 2012 procedure — Exclusion of the applicant from the list of officials authorised to follow the 2013 training programme — Article 45a of the Staff Regulations — Objection of illegality as regards the call for applications — GIPs for Article 45a of the Staff Regulations — Scope)

**Application:** under Article 270 TFEU, applicable to the EAEC Treaty by virtue of Article 106a thereof, in which Mr Migliore seeks, principally, annulment of the decision of the appointing authority of the European Commission of 19 April 2013 excluding him from the list of 63 officials authorised to participate in 2013 in the certification training programme for 2012 ('the 2012 certification procedure'), and compensation for the harm he considers he has suffered.

**Held:** The action is dismissed. Mr Migliore is to bear his own costs and is ordered to pay the costs incurred by the European Commission.

### Summary

- 1. Officials — Certification procedure — Pre-selection of candidates — Criteria — Comparison of candidates by two different bodies depending on whether other candidates have been pre-selected in the same directorate-general — Breach of the principle of equal treatment — None — Condition (Charter of Fundamental Rights of the European Union, Arts 20 and 21; Staff Regulations, Art. 45a)*
- 2. Officials — Certification procedure — Conditions for implementing — Restrictive interpretation (Staff Regulations, Art. 45a)*
- 3. Officials — Certification procedure — Pre-selection of candidates — Obligation to hear candidates not ranked among the highest prior to adoption of the definitive decision to exclude them (Staff Regulations, Art. 45a)*
- 4. Officials — Certification procedure — Complaint by a candidate not selected — Rejection decision — Obligation to state reasons — Scope — Not permissible for the statement of reasons to be formulated merely in general and stereotypical terms (Staff Regulations, Arts 25, 45 and 90(2))*

5. *Officials — Certification procedure — Consideration of comparative merits — Administration's discretion — Judicial review — Limits*  
(*Staff Regulations, Art. 45a*)

1. The principle of equal treatment, which is enshrined in Articles 20 and 21 of the Charter of Fundamental Rights of the European Union, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way unless such treatment is objectively justified.

In the case of a call for applications as part of the certification procedure provided for in Article 45a of the Staff Regulations, the situation of a candidate who is the only one pre-selected in his directorate-general is objectively different from that of a pre-selected candidate who is able to be compared with other candidates employed in the same directorate-general. The two situations of those pre-selected candidates, which are factually different, must therefore each be subject to its own appropriate method of comparison for the purpose of establishing an order of priority.

In that context, although the call for applications allocates the task of comparing candidates who are the only ones pre-selected in a directorate-general or department to a single, joint body, whereas where there are a number of pre-selected candidates in a given directorate-general or department the task is entrusted to their line managers, that difference in treatment, based on an objective difference in situations and on a procedure organised on the basis of pre-determined legal criteria known in advance to all those involved, is not manifestly disproportionate in the light of the purpose of the applicable rules, which is to draw up a definitive ranking of the top priority candidates.

(see paras 40, 45, 49, 50)

See:

Judgment in *Akzo Nobel Chemicals and Akros Chemicals v Commission*, C-550/07 P, EU:C:2010:512, paras 54 and 55 and the case-law cited therein

Judgment in *Commission v Bertolete and Others*, T-359/07 P to T-361/07 P, EU:T:2009:40, paras 50 and 51

2. The provisions of Article 45a of the Staff Regulations concerning the certification procedure, being derogating provisions designed to allow officials in the assistants function group (AST) to be appointed to posts in the administrators function group (AD) under the special conditions laid down therein, must be interpreted and applied restrictively.

(see para. 43)

3. In a procedure for selecting candidates for a training programme designed to allow officials in the AST function group potentially to be appointed to a post in the AD function group by means of the certification procedure laid down in Article 45a of the Staff Regulations, the right to be heard guarantees that every candidate whose name is not included in the draft list of the highest ranked candidates pre-selected to participate in that training programme has the opportunity to make his views known on his exclusion, which is not yet definitive, usefully and effectively to the competent administrative authorities.

(see para. 67)

See:

Judgment in *Kamino International Logistics and Datema Hellmann Worldwide Logistics*, C-129/13 and C-130/13, EU:C:2014:2041, para. 39 and the case-law cited therein

4. The statement of reasons for a decision to reject an application in the context of a certification procedure under Article 45a of the Staff Regulations must be produced, at the latest, at the time the complaint against that decision is rejected. However, an inadequate statement of reasons provided in the course of the pre-litigation procedure is not such as to justify annulment of the contested decision where additional information is provided during the proceedings. Furthermore, a general, stereotypical statement of reasons which does not contain any information specific to the case of the person concerned amounts in reality to a total absence of a statement of reasons.

(see para. 77)

See:

Judgment in *Sena v EASA*, T-30/04, EU:T:2005:161, paras 63 and 71 to 73

Judgment in *Verstreken v Council*, F-98/12, EU:F:2013:156, para. 32 and the case-law cited therein

5. In view of the administration's broad discretion in assessing and comparing the merits of candidates in any selection procedure, and particularly the certification procedure provided for in Article 45a of the Staff Regulations, the Tribunal's review must be confined to the question whether, having regard to the considerations which influenced the administration in making its assessment, the latter remained within reasonable bounds and did not use its power in a manifestly incorrect way or for purposes other than those for which that power was conferred on it. The Tribunal cannot therefore substitute its assessment of the merits and qualifications of the candidates for that of the administration where there is nothing in the file to suggest that, in assessing those merits and qualifications, the administration committed a manifest error.

In that regard, the fact that a candidate has his own acknowledged merits does not preclude the possibility that, in the context of consideration of the comparative merits of candidates for the certification procedure, other officials may have higher merits than his.

(see paras 90, 93)

See:

Judgments in *Bouteiller v Commission*, 324/85, EU:C:1987:59, para. 6, and *Cubero Vermurie v Commission*, C-446/00 P, EU:C:2001:703, para. 21

Judgment in *Campos Valls v Council*, F-39/07, EU:F:2009:45, para. 43