



Reports of Cases

Case T-601/16

Georges Paraskevaïdis

v

European Centre for the Development of Vocational Training

(Civil Service — Officials — Cedefop — Promotion — 2015 Promotion exercise — Decision not to promote the applicant to Grade AD 12 — Articles 44 and 45 of the Staff Regulations — Comparison of the merits — Duty to state reasons — Implied rejection of the complaint — Liability)

Summary — Judgment of the General Court (Ninth Chamber), 26 October 2017

1. *Officials — Promotion — Complaint by a candidate not promoted — Implied decision rejecting a complaint — Obligation to state reasons — Scope — Inadequate statement of reasons — Regularisation during the proceedings — Conditions*

(Art. 296 TFEU; Staff Regulations, Arts 25, second para., 45 and 90(2))

2. *Officials — Decision adversely affecting an official — Obligation to state reasons — Complete lack of reasoning — Regularisation after the action has been brought — Not permissible*

(Staff Regulations, Art. 25, second para.)

3. *Officials — Promotion — Complaint by a candidate not promoted — Failure to respond to the complaint brought against a decision not to promote without a statement of reasons — Infringement of the duty to state reasons*

(Art. 296 TFEU; Staff Regulations, Arts 25, second para., 45 and 90(2))

4. *Officials — Non-contractual liability of the institutions — Conditions — Unlawfulness — Injury — Causal link — Burden of proof*

(Art. 340 TFEU)

5. *Actions brought by officials — Actions for damages — No statement of reasons in the contested act — Annulment of the contested act not providing appropriate compensation for non-material damage — Feelings of injustice, confusion and frustration — Award of financial compensation*

(Arts 266 TFEU and 340(2) TFEU)

1. See the text of the decision.

(see paras 36-39, 43-45)

2. See the text of the decision.

(see paras 40-42)

3. Having regard to the importance of the obligation to state reasons with regard to the rights of the defence of an official, it is only exceptionally that the context in which a decision not to promote an official is taken, limited to a list of promoted officials, which was impliedly upheld after a complaint was lodged, may constitute the initial elements of a statement of reasons for the decision. Thus, the initial elements of a statement of reasons cannot exist in the absence of any indication by the appointing authority concerning the applicant's specific situation and the comparison of his merits with those of other officials eligible for promotion with regard to the criteria in Article 45 of the Staff Regulations. The knowledge that the applicant had of criteria to be taken into account in order to be promoted should not be confused with the knowledge of the way in which those criteria were applied to his situation.

Accepting that mere negative assessments made about an official in his evaluation reports may suffice as initial elements of a statement of reasons risks compromising the purpose of the pre-litigation procedure laid down in Article 90(2) of the Staff Regulations, that is, the amicable settlement of disputes which arise at the time of the complaint.

Such an approach would enable the appointing authority to rely on any negative assessment of a candidate not promoted and of which he was informed in order to avoid its obligation to inform him of a reasoned decision rejecting his complaint, deriving from Article 90(2), second paragraph, of the Staff Regulations and which constitutes a specific expression of the requirement to give reasons for any decision adversely affecting an official laid down in Article 25, second paragraph, of the Staff Regulations and the right to good administration guaranteed by Article 41 of the Charter of Fundamental Rights of the European Union.

Such a failure to respond to a complaint, which is brought against a decision not to promote an official which itself gives no reasons, is likely to give rise to or reinforce feelings of confusion or frustration and thereby create an atmosphere liable to result in the commencement of proceedings before the courts of the European Union which, if the appointing authority had acted with the diligence required, might have been avoided.

(see paras 46, 50, 63-65)

4. See the text of the decision.

(see paras 78, 79)

5. See the text of the decision.

(see paras 83-85)