



## Reports of Cases

JUDGMENT OF THE EUROPEAN UNION CIVIL SERVICE TRIBUNAL  
(Second Chamber)  
19 September 2013

Case F-83/08

**Johan Gheysens**  
v  
**Council of the European Union**

(Civil service — Auxiliary member of the contract staff — Conditions of engagement —  
Function group — Types of duties and corresponding function groups — Duration of employment)

**Application:** under Articles 236 EC and 152 AE, seeking annulment of the decision of the authority authorised to conclude contracts of employment of the Council of the European Union by which it classified Mr Gheysens in function group III, grade 11, step 1, and limited the duration of his contract of employment to two years.

**Held:** The decision of the Council of the European Union to recruit Mr Gheysens is annulled in so far as it classifies him in function group III. The application is dismissed as to the remainder. The Council of the European Union is to bear its own costs and is ordered to pay three quarters of the costs incurred by Mr Gheysens. Mr Gheysens is to bear one quarter of his own costs.

### Summary

*1. Officials — Contract staff — Recruitment — Assessment of duties falling within the various function groups — Discretion of the authority authorised to conclude contracts of employment — Judicial review — Limits  
(Conditions of Employment of Other Servants, Art. 80(2))*

*2. Officials — Auxiliary staff and contract staff — Recruitment — Contract concluded with a view to temporary occupation of a permanent post — Where permissible  
(Staff Regulations, Art. 1a(1); Conditions of Employment of Other Servants, Arts 2 to 5, 51, 53 and 88)*

1. Article 80(1) of the Conditions of Employment of Other Servants ('CEOS') provides that contract staff are to be subdivided into four function groups corresponding to the duties to be performed. Paragraph 2 of that Article sets out the duties corresponding to each function group. Article 80(2) of the CEOS is mandatory in relation to the authority authorised to conclude contracts of employment, but the provision allows the institutions a wide discretion. In order to provide a framework for the exercise of that discretion, Article 80(3) of the CEOS provides for each institution, after consulting the Staff Regulations Committee, to define the powers attaching to each type of duty. In the light of the wide discretion which the institutions, bodies and agencies of the Union have in assessing the duties which may fall within the various function groups referred to in Article 80(2) of the CEOS, the

Tribunal's review of compliance with the division of the duties among those function groups must be limited to the question whether the authority authorised to conclude contracts of employment remained within reasonable bounds and did not use its discretion in a manifestly incorrect way. Consequently, in order to establish that the administration committed a manifest error in assessing the facts, such as to justify the annulment of a decision based on that assessment, the evidence, which it is for the applicant to adduce, must be sufficient to make its findings implausible.

In order to determine whether, in the light of the duties to be performed by a member of staff, the authority authorised to conclude contracts of employment committed a manifest error in assessing the facts when it classified him in a particular function group, it must be established whether those duties fell within the function group in question. Since the classification of a member of the contract staff takes place at the time the contract is made, it is the full range of duties which he may be asked to perform, under the terms of the contract, that must be taken into account. In the event that the institution, for some reason, has not entrusted certain duties to him during the period of the contract, consideration is not limited to those duties which he has actually performed.

(see paras 29-31, 33-35)

See:

4 October 2007, F-32/06 *De la Cruz and Others v OSHA*, para. 64; 24 April 2008, F-61/05 *Dalmaso v Commission*, para. 53; 13 June 2012, F-63/11 *Macchia v Commission*, on appeal to the General Court in Case T-368/12 P, para. 49 and the case-law cited

2. It is clear from Article 1a(1) of the Staff Regulations, read together with Articles 2 to 5 of the CEOS, that permanent posts in the institutions are, in principle, intended to be filled by officials and that it is only by way of exception that such posts may be filled by other staff. Thus, although Articles 2(b) and (d) of the CEOS expressly provide that temporary staff may be engaged to fill a permanent post, they also stipulate that this must be temporary. Furthermore, Articles 3(b) and 3b(b) of the CEOS provide that the administration may engage auxiliary staff or auxiliary contract staff to replace certain officials or temporary staff occupying permanent posts, after the possibilities of temporary posting of officials within the institution have been examined. Nevertheless, Articles 51 and 53 of the CEOS, together with Article 88, stipulate in relation to such staff that the contract of employment must be for a fixed period, as well as limiting both the possibility of renewal and the actual period of employment. Consequently, the employment of such staff has a precarious character which reflects its purpose, namely to replace an official who is temporarily unavailable. Indeed, only an official can occupy a position which is included in a list of budgetary posts not having a temporary character.

(see paras 61-64)

See:

21 September 2011, T-325/09 P *Adjemian and Others v Commission*, paras 78 to 80