

### Form of order sought

The applicants claim that the Tribunal should:

- annul the decision of the Appointing Authority published in Administrative Notice No 85-2005 of 23 November 2005, in so far as it provided for the applicants' promotion to grade A\*9, step 1;
- so far as necessary, annul the Appointing Authority's decision of 23 May 2006 in so far as it rejected the complaint submitted by the applicants;
- order the defendant to pay the costs.

### Pleas in law and main arguments

The applicants, Commission officials, challenge the Appointing Authority's decision to promote them in the 2005 promotion procedure to grade A\*9, a new grade inserted since 1 May 2004 between grades A\*8 (formerly A7) and A\*10 (formerly A6). They claim that the Appointing Authority should have promoted them, not to grade A\*9 but to grade A\*10, as it did in the 2004 promotion procedure for officials who, like the applicants, on 30 April 2004 were classified in grade A7 and were eligible for promotion to the higher grade A6.

In support of their action, the applicants raise three pleas, the first of which alleges infringement of the principles of equal treatment and reasonable career prospects. The applicants claim that, in accordance with those principles, the officials who on 30 April 2004 were classified in grade A7 (renamed grade A\*8 from 1 May 2004) and were eligible for promotion to the higher grade should all be subject to identical conditions as regards career progress. However, the officials who were promoted in November 2004 in the 2004 procedure — thus after the entry into force of the new Staff Regulations — were appointed after promotion to grade A\*10, while those — such as the applicants — promoted in the 2005 procedure were only appointed to a lower grade, namely the intermediate grade A\*9, even though the two groups of persons referred to above were in a position which was comparable in all respects.

In connection with this plea, the applicants also raise a plea of illegality for the purpose of Article 241 EC of the General Implementing Provisions ('GIP') of Article 45 of the Staff Regulations applicable to the 2005 promotion procedure or, more fundamentally, of Article 45 of Annex XIII to the Staff Regulations, in that those provisions did not lay down transitional measures intended to ensure the observance of the principles of equal treatment and reasonable career prospects between officials who were of grade A7 on 30 April 2004 and eligible for promotion on that date to the higher grade A6.

By their second plea, the applicants allege there was an infringement of the principle of the protection of legitimate expectations. They claim, inter alia, that Article 10(5) of the GIP of Article 45 of the Staff Regulations applicable to the 2004 promotion procedure guarantees to A7 officials eligible for promotion on 30 April 2004 (and reclassified as A\*8 on 1 May 2004) career progress conditions comparable to those which

they would have had under the career structure applicable until that date, by providing for, by means of a legal fiction (retroactive promotion) their promotion from grade A\*8 directly to grade A\*10. The applicants maintain that the adoption of that transitional measure created the legitimate expectation on their part that a measure having the same effect would also be adopted in subsequent promotion procedures.

The third plea alleges that no reasons were stated for the contested decision. The applicants claim in that regard that, even if, by its nature, the promotion decision does not need to contain specific reasons for the Appointing Authority's choice, the authorities are nevertheless required to give reasons for their choice in the reply to the complaint brought against that decision. However, in the present case, the Appointing Authority only answered the complaints set out by the applicants very superficially and, in particular, did not answer the fundamental question raised by the complaint, which is connected with the inequality of treatment between A7 officials (reclassified as A\*8) promoted in the 2005 promotion procedure and their counterparts promoted in the 2004 promotion procedure.

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### Action brought on 1st September 2006 — Erbežnik v European Parliament

(Case F-106/06)

(2006/C 281/83)

*Language of the case: Slovenian*

### Parties

*Applicant:* Anže Erbežnik (Luxembourg, Luxembourg) (represented by: P. Peče, Lawyer)

*Defendant:* European Parliament

### Form of order sought

- annul the decision of the Secretary General of the European Parliament No 110029 of 1st June 2006;
- deliver a ruling in which the applicant is identified as a person who had a lawful non-marital relationship recognised by the primary and secondary rules of EU legislation with Miss H. (now Mrs Erbežnik) from the start of his work as a Lawyer Linguist for the European Parliament and therefore has right to a full payment by the European Parliament of his installation allowance as it is provided for married officials and is being calculated on the basis of the household allowance;

- alternatively, deliver a decision whereby the European Parliament is obliged to take into account the change in the family status of the applicant (his marriage) in accordance with the principle of proportionality and provide him the full amount on installation allowance (for married officials) for the parts of the installation allowance paid after his marriage in August 2005;
- order the defendant to pay default interest;
- order the defendant to pay the costs.

### Pleas in law and main arguments

From the time of his recruitment in Slovenia by the European Parliament in September 2003, and prior, the applicant had a stable non-marital relationship with his girl-friend, who became his wife in August 2005. The applicant alleges that this relationship would be legally recognised by Slovenian law.

At the beginning of his employment at the European Parliament, the applicant asked for a household allowance, which was refused on the ground that such an allowance was reserved for married couples and same-sex non-marital relationships in accordance with Article 1 of Annex VII of the Staff Regulations. In May 2005 he applied for an installation allowance, which is equal to two months' basic salary in the case of an official who is entitled to the household allowance, and equal to one month's basic salary in other cases. He was granted the first part of the installation allowance (which is paid in three parts, one part per year) provided for singles. After his marriage, he applied for the part of the installation allowance that is granted to married staff but he was denied on the grounds the change in his family status was posterior to the end of his probationary period.

In support of his action, the applicant relies mainly on the following pleas in law:

- first, invalidity of Article 1 (2) (c) and 1 (2) (d) of Annex VII of the Staff Regulations and alternatively wrong interpretation of those articles by the defendant's administration due to infringements of basic Community concepts such as free movements of workers, citizenship of the European Union and free movement of persons, prohibition of discrimination and unequal treatment, and non-respect of basic human rights and of principle of proportionality;
- Secondly, wrong interpretation of the date of the end of the probationary period as an absolute definitive date for the installation allowance although the payments themselves are being carried out in a three years period.

### Action brought on 15 September 2006 — Dittert v Commission

(Case F-109/06)

(2006/C 281/84)

*Language of the case: French*

### Parties

*Applicant:* Daniel Dittert (Luxembourg, Luxembourg) (represented by: B. Cortese and C. Cortese, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul the decision of the Appointing Authority to award a number of priority points to the applicant which was insufficient to allow his promotion in the 2005 promotion procedure and not to promote him in that promotion procedure, as confirmed by the decision of 6 June 2006, rejecting the applicant's complaint No R/73/06
- order the defendant to pay the costs

### Pleas in law and main arguments

In support of his application, the applicant puts forward a single plea: the contested decision is tainted by serious defects resulting from a procedural irregularity and from an infringement of the principle of good administration and of the duty to have regard for the welfare of officials.

Following a technical problem, which remains unexplained, the applicant's file was not taken into account by his Directorate-General when it was allocating priority points in the 2005 promotion procedure. This failure to take the applicant into account constitutes a procedural flaw and an infringement of the principle of good administration and of the duty to have regard for the welfare of officials.

Those irregularities were such as to invalidate the 2005 promotion procedure in so far as it concerned the applicant, and to harm the applicant's interests, since he was allocated fewer priority points than his own superiors (in this case, the Director-General of DG Competition) wished to give him, once the technical problem had been detected. In effect, according to the applicant, DG Competition assured him that, absent the technical problem, it would have allocated to him a sufficient number of points to ensure his promotion to grade AD9, namely 7 points; the DG also expressly asked the A\* Promotion Committee to remedy the applicant's situation by allocating that number of points to him. Notwithstanding this, the A\* Promotion Committee proposed the allocation of only 4 'points awarded on appeal' to the applicant, and the Appointing Authority followed this advice, with the result that the applicant was allocated an insufficient number of points to allow his promotion to grade AD9 in the 2005 exercise.