

Form of order sought

- annul the decision of the European Parliament of 30 January 2006, which informed the applicant of the decision to reassign her from the Parliament's Italian Information Office, based in Rome, to the Information Directorate-General, based in Brussels, and of the extension of her temporary contract until 16 July 2006, instead of until 31 December 2009, as previously decided by the Parliament;
- order the defendant to pay, increased by default interest, all of the monthly salaries connected to the applicant's position of press attaché in Rome, from the date on which the temporary contract should have been renewed, that is, from 1 January 2006, until 31 December 2009;
- order the defendant to pay compensation for material damage, estimated at EUR 240 414,42, and EUR 500 000 for non-material damage or such higher or lower amount as the Court may determine;
- order the defendant to pay the costs.

- the fifth concerns infringement of the principles of proportionality and of sound administration. First, the applicant received no warning of the possibility of transfer at such short notice. Second, the facts underlying the transfer were not properly ascertained and the statutory provisions relating to the behaviour for which the applicant is criticised were not complied with;
- the sixth concerns infringement of the right of defence, in particular the fact that the defendant, although having had the opportunity to hear the applicant, did not follow up her declarations in any way, and did not give the parties any opportunity to set out their views on the matter;
- the seventh concerns infringement of the duty to provide assistance set out in Article 24 of the Staff Regulations, which requires the administration to protect officials even where the person responsible for the matters regulated by the provision in question is another official. Although the applicant advanced prima facie evidence capable of supporting her allegations, the administration took no adequate measures.

Action brought on 2 October 2006 — Di Bucci v Commission**(Case F-118/06)**

(2006/C 294/133)

*Language of the case: French***Pleas in law and main arguments**

The applicant invokes seven pleas in support of her action:

- the first concerns infringement of the principle of legitimate expectations, in that the administration gave the applicant to believe, beyond any reasonable doubt, that her position as press attaché with the Parliament's Rome Office would be confirmed and that her contract would be extended until 31 December 2009;
- the second concerns infringement of essential procedural requirements by reason of an insufficient and contradictory statement of reasons. In particular, the arguments alleging insufficiency of the applicant's professional capacities are contradicted by the reports concerning her drawn up pursuant to Article 43 of the Staff Regulations;
- the third concerns misuse of powers due to manifest error of assessment of fundamental circumstances and inconsistency. The reassignment decision is not based on professional incompetence or on the interests of the service but on the desire for retaliation on the part of the applicant's hierarchical superior;
- the fourth is based on breach of the duty of care in that, according to the applicant, the contested decision was adopted without the necessary care and without taking account of the employee's interests;

Parties

Applicant: Vittorio Di Bucci (Brussels, Belgium) (represented by: M. van der Woude, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul the merit list and the list of officials promoted to grade A*12 in 2005, drawn up pursuant to Article 10(3) and (4) of the General Provisions for Implementing Article 45 of the Staff Regulations and published in Administrative Notice No 85-2005 of 23 November 2005 and, in any event, annul the decision not to include the applicant's name in the list of promoted officials;

- in so far as necessary, annul all of the measures which led to the adoption of that decision and, in particular, the decisions setting the number of points to be awarded to the applicant;
- order the defendant to pay the costs.

Pleas in law and main arguments

The applicant, an official assigned to the Legal Service who has regularly obtained one of the highest assessments, in terms of merit points (MP), in his grade and in his department, invokes firstly infringement of Article 45 of the Staff Regulations and of the General Provisions for implementing that article, which require merit to be the determining factor for the awarding of Directorate-General (DG) priority points and for promotion. The non-promotion of the applicant is the result, first, of the unlawful conduct which he has already challenged in Cases F-98/05 ⁽¹⁾ and T-312/04 ⁽²⁾; second, of the criteria for awarding DG priority points within the Legal Service, which give priority to the most senior officials in the grade, irrespective of their merit; third, of certain flaws in the awarding of points, in particular by the Promotion Committee, to other officials.

The applicant further alleges that the contested measures also infringe the principle of equal treatment and the principle that officials should have reasonable career prospects, include a manifest error of assessment and constitute a misuse of powers. Finally, they are marred by several procedural or formal defects.

Finally, the applicant pleads the illegality of the abovementioned General Provisions, arguing as follows:

- by omitting to take into account the level of responsibility deployed and the use of different languages in the performance of duties, the General Provisions infringe the new version of Article 45 of the Staff Regulations;
- by providing that promotions are to be determined by the unreasoned awarding of priority points, on the proposal of each DG or the Promotion Committee, Articles 2, 4, 5, 6, 8, 9, 10, 12 and 13 of the General Provisions infringe in particular Articles 25(2) and 45 of the Staff Regulations;
- by attributing to each DG a uniform quota of points per official, Articles 4 and 6 of the General Provisions infringe Article 45 of the Staff Regulations, the principle that officials should have reasonable career prospects, and the principle of equal treatment;
- by providing for the award of transitional priority points based essentially on seniority within a grade, Article 13(2) of and Annex II to the General Provisions infringe Article 45 of the Staff Regulations;
- by providing for the awarding of priority points of the Personnel Committee in recognition of certain supplementary tasks undertaken in the interest of the institution which are already taken into account during the awarding

of MPs and DG priority points, Article 9 of and Annex I to the General Provisions infringe Article 45 of the Staff Regulations as well as the principle that officials should have reasonable career prospects and the principle of equal treatment;

- by providing for more favourable treatment for officials of DGs or services that have fewer staff and for officials seconded to the offices of members of the Commission, Article 6(2) of the General Provisions infringes Article 45 of the Staff Regulations as well as the principle that officials should have reasonable career prospects and the principle of equal treatment.

⁽¹⁾ OJ C 10 of 14.1.2006, p. 24 (case initially registered before the Court of First Instance of the European Communities under number T-381/05 and transferred to the Civil Service Tribunal of the European Communities by order of 15.12.2005).

⁽²⁾ OJ C 262 of 23.10.2004, p. 45.

Action brought on 9 October 2006 — Kerstens v Commission

(Case F-119/06)

(2006/C 294/134)

Language of the case: French

Parties

Applicant: Petrus J. F. Kerstens (Overijse, Belgium) (represented by: C. Mourato, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul the decision of 8 December 2005 of the Board of the Office for Administration and Payment of Individual Entitlements (PMO) amending the PMO's organisation chart;
- annul the express decision of the Appointing Authority of 6 July 2006 rejecting the applicant's complaint No R/167/06;
- order the Commission to pay the applicant a sum assessed on equitable principles at EUR 5 000 as damages;
- order the Commission of the European Communities to pay the costs.