

- order the defendant to compensate the applicant for the loss suffered, both professional and financial (salary and associated benefits which he would have received from 1 November 2006 to the date of his re-employment resulting from the annulment of the contested decision) and non-pecuniary (by reference to an indicative sum of EUR 50 000);
- order the defendant to pay the costs.

### Pleas in law and main arguments

In support of his action the applicant relies on four pleas in law, the first of which alleges (i) infringement of Article 34 of the Staff Regulations of Officials of the European Communities, (ii) breach of the duty of have regard to the welfare of officials and (iii) breach of the principle of sound administration. In particular, his probationary period took place in conditions which were unusual and contrary to various internal procedural rules.

The second plea in law alleges breach of the obligation to state reasons, in that the decision to dismiss did not contain explanations and relied on statements which were contradictory and less favourable than those which appeared in the first probationary report.

In the third plea in law, the applicant submits that the decision to dismiss was disproportionate and vitiated by a manifest error of assessment, in that, first, it did not take into account the results of certain personality tests and, secondly, a negative evaluation as head of unit, even were it to be well founded, should have led only to transfer to a post without such responsibilities.

In his fourth plea in law, the applicant relies on breach of the rights of the defence and of the principle of equal treatment, in that the decision to dismiss was taken on the basis of reports adopted without his first being heard and of which the last was finalised in breach of the applicable procedural rules.

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### Action brought on 29 July 2007 — Brown and Volpato v Commission

(Case F-75/07)

(2007/C 235/55)

*Language of the case: French*

#### Parties

*Applicants:* Colin Brown (Brussels, Belgium) and Alberto Volpato (Moscow, Russia) (represented by: B. Cortese and C. Cortese, lawyers)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul the decision of the Commission of the European Communities published in Administrative Notices No 55-2006 of 17 November 2006 inasmuch as it promoted the applicants to grade AD9, step 1, under the 2006 promotion exercise;
- in so far as is necessary, annul the Commission decisions of 23 April 2007 inasmuch as they dismissed the complaints brought by the applicants;
- order the Commission to pay the costs.

### Pleas in law and main arguments

The applicants, Commission officials, challenge the decision to promote them, under the 2006 promotion exercise, to grade AD9, a new grade inserted, since 1 May 2004 between grades AD8 (formerly A7) and AD10 (formerly A6). They submit that they should have been promoted not to grade AD9 but to grade AD10, following the example of what had been done in the 2004 promotion exercise in respect of officials who, like the applicants, were in grade A7 on 30 April 2004 and were eligible for promotion to the next grade, A6.

The applicants rely on very similar pleas in law to the first and third pleas in law relied on in Case F-105/06 <sup>(1)</sup>.

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<sup>(1)</sup> OJ C 281, 18.11.2006, p. 45.

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### Action brought on 17 July 2007 — Birkhoff v Commission

(Case F-76/07)

(2007/C 235/56)

*Language of the case: German*

#### Parties

*Applicant:* Gerhard Birkhoff (Weitnau, Germany) (represented by: K. Hösgen, lawyer)

*Defendant:* Commission of the European Communities

### Form of order sought

- annul the Appointing Authority's decision of 18 April 2007 concerning the applicant's complaint (No R/16/07);
- order the defendant to pay the costs.