

- the reconstitution on that basis of their careers between the date when they took up their duties as probationary officials and the date of the decision to be taken;
- the payment of the difference between the remuneration to which they would have been entitled during that period if they had been classified in grade B*6 and that which they received on account of their classification in grade B*3;
- order the defendant to pay the costs

In support of their action, the applicants rely on one plea in law alleging infringement of Article 5(3) and (4) and Article 12(3) of Annex XIII to the Staff Regulations interpreted by reference to the principle of equal treatment. In particular, Article 5(4) of Annex XIII to the Staff Regulations should be interpreted as meaning that it is applicable to temporary servants who were appointed officials on the basis of open competitions, something which would preclude the classification in grade of that group from being fixed on the basis of Article 12(3) of Annex XIII to the Staff Regulations.

(¹) OJ L 124, 27.4.2004, p. 1.

Pleas in law and main arguments

The applicants state that they were recruited by the Commission as auxiliary staff to the posts of proofreaders within OPOCE before the entry into force, on 1 May 2004, of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of Officials of the European Communities and the Conditions of Employment of other servants of the European Communities (¹) in view of the enlargement and of filling those posts by open competition.

After they had passed the open competitions published at grade B5/B4 before 1 May for the purpose of filling those posts, the applicants were recruited as probationary officials on the basis of reserve lists published after that date. They were classified in grade B*3 on the basis of Article 12(3) of Annex XIII to the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

The applicants submit that their action is admissible on account of a new substantial fact although they did not bring a complaint against the decisions laying down their classification in grade in the period laid down in the Staff Regulations for filing a complaint. That new substantial fact is the decision of the Bureau of the European Parliament of 13 February 2006 to reclassify the temporary servants who were appointed officials, on the basis of open competitions, after 1 May 2004, in the grade in which they would have been classified if they had been recruited as officials before that date.

The applicants consider that they have been discriminated against by the reclassification of those officials of the Parliament and take the view that they should be entitled to the same treatment, inasmuch as they submit that they were really recruited as temporary servants and not as auxiliary staff. In their opinion, their contracts fall within the scope of Article 2 of the Conditions of Employment of Other Servants (CEOS) and not of Article 3a thereof given that they had to fill posts which were temporarily vacant and not to replace officials or temporary servants who were unable for the time being to perform their duties. In the alternative, the applicants submit that, even if they had been recruited as auxiliary staff, their position would in any event have been analogous to that of temporary servants.

Action brought on 6 August 2007 — Barbin v Parliament

(Case F-81/07)

(2007/C 247/71)

Language of the case: French

Parties

Applicant: Florence Barbin (Luxembourg, Luxembourg) (represented by: S. Orlandi, J.-N. Louis, A. Coolen and E. Marchal, lawyers)

Defendant: European Parliament

Form of order sought

- annul the Parliament's decision not to promote the applicant to grade AD 12 in the 2006 promotion procedure
- order the defendant to pay the costs

Pleas in law and main arguments

The applicant submits that, according to the internal provisions of the Parliament governing promotion, the average length of time spent in grade AD 11 is four years. The applicant has been classified in that grade since 1 April 2001 and had reached the relevant threshold for promotion to grade AD 12 in the 2006 promotion procedure. Furthermore, the Promotion Committee entered her name on the list of officials who were recommended for promotion to that grade by virtue of the procedure in question.

According to the applicant, the Appointing Authority did not provide any information to explain the refusal to promote her and thus infringed the obligation to state reasons. Furthermore, the contested decision is based on the decision, which is the subject-matter of Case F-44/07 ⁽¹⁾, to allocate the applicant only one merit point. Lastly, the applicant alleges infringement of Article 1d of the Staff Regulations of Officials of the European Communities.

⁽¹⁾ OJ C 155 of 7.7.2007, p. 45.

Action brought on 25 August 2007 — Marcuccio v Commission

(Case F-86/07)

(2007/C 247/72)

Language of the case: Italian

Parties

Applicant: Luigi Marcuccio (Tricase, Italy) (represented by: G. Cipressa, lawyer)

Defendant: Commission of the European Communities

Form of order sought

- annul the decision ('the contested decision'), in whatever form, by which the Commission rejected the applicant's claim of 10 July 2006 for compensation for damage caused to him by the unlawful actions and conduct, particularly psychological harassments, perpetrated by the Commission's servants during the applicant's assignment to the Commission delegation in Angola;
- annul, so far as necessary, the note dated 9 October 2006, prot. PMO.3/MLP/mc D(2006) 9277;

- annul, so far as necessary, the note dated 23 April 2007, ref. ADMINB.2/MB/ade D(2007) 8725, rejecting the applicant's complaint of 27 December 2006 against the contested decision and the note of 9 October 2006;
- annul, so far as necessary, the note of 27 September 2005, ref. ADMIN/IDOC/GC/eh D(2005) 22005;
- ascertain the reality of the actions and conduct complained of in the applicant's claim of 10 July 2006, declaring them to be unlawful, or, in the alternative, order the Commission to carry out an investigation without delay;
- order the Commission to communicate the results of such investigation without delay and in writing, giving them suitable publicity and making them available to the public;
- order the Commission forthwith to destroy the original and all copies of the archive note dated 14 August 2001, headed 'Conduite professionnelle de M. Luigi Marcuccio, conseiller économique à la délégation en Angola', and to notify the applicant in writing of that destruction;
- order the Commission to pay the applicant the sum of EUR 1 520 000, or such other sum as the Tribunal may consider just, in compensation for damage suffered by the applicant to date;
- order the Commission to pay the applicant, from tomorrow until final implementation of judgment in favour of the applicant, the daily sum of EUR 1 000, or such other sum as the Tribunal may consider just, to be paid on the first day of each month in arrear, in respect of damage suffered by the applicant during the period between tomorrow and the date of implementation.
- order the Commission to pay the costs.

Pleas in law and main arguments

Absolute failure to state reasons, and illogicality, inconsistency, irrationality, confusion and pretexts in the reasons put forward by the Commission; (2) serious and manifest breach of the law; (3) infringement of the duty to pay due regard to the welfare of officials and of the duty of sound administration.