

Action brought on 17 September 2007 — Evraets v Commission

(Case F-92/07)

(2007/C 283/79)

*Language of the case: French***Parties***Applicant:* Pascal Evraets (Lambusart, Belgium) (represented by: N. Lhoëst, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

The applicant claims that the Tribunal should:

- annul the decision of the appointing authority publishing the list of officials promoted to grade AST 4 under the 2006 promotion procedure, in so far as the Commission did not take into account the applicant's eligibility for promotion for the purpose of the 2006 promotion procedure and in so far as the applicant's name is not included in the list of promoted officials;
- so far as necessary, annul the express decision of the Commission of 6 June 2007 rejecting the complaint brought by the applicant under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') on 16 February 2007;
- order the Commission to pay the costs.

Pleas in law and main arguments

The applicant, a former temporary servant appointed an official in grade AST 3 from 16 April 2004 after being successful in an internal competition, was held to be ineligible for promotion under the 2006 promotion procedure since he had not demonstrated the ability to work in a third language in accordance with Article 45(2) of the Staff Regulations.

In support of his appeal, the applicant is putting forward three pleas, the first of which alleges infringement of Article 45(1) of the Staff Regulations and the illegality of Article 10(5) of the General Provisions Implementing Article 45 of the Staff Regulations ('the GIP'). The applicant maintains that, under Article 45(1) of the Staff Regulations, which requires two years' service in order to be eligible for promotion, he could have been promoted on 16 April 2006, that is, before the entry into force of the requirement to demonstrate the ability to work in a third language. Article 11 of Annex XIII to the Staff Regulations provides that Article 45(2) does not apply to promotions which take effect prior to 1 May 2006. The applicant submits that, by requiring that he have the ability to work in a third language on the ground that his promotion, under Article 10(5) of the GIP, would not become effective until 1 May 2006, the Commission infringed Article 45(1) of the Staff Regulations.

The second plea alleges unequal treatment and the illegality, first, of Article 11 of Annex XIII to the Staff Regulations and, secondly, of Article 1(1) of the Common Rules on laying down the procedure for implementing Article 45(2) of the Staff Regulations, adopted by the Commission on 19 July 2006. The applicant submits, *inter alia*, that officials recruited between 15 April 2004 and 30 April 2004 were employed under the same provisions of the Staff Regulations as officials recruited before 15 April 2004, that is, before Article 45(2) of the Staff Regulations came into force. Consequently, by making officials recruited between 15 and 30 April 2004 subject to promotion conditions which are more restrictive than those for officials recruited before 15 April 2004, Article 11 of Annex XIII to the Staff Regulations and Article 1(1) of the Common Rules are discriminatory. Furthermore, the applicant argues that, in accordance with Article 5(3) of Annex XIII to the Staff Regulations, knowledge of a third language is not required for the purposes of the first promotion of officials who, while having been recruited after 1 May 2004, were temporary servants prior to that date. The applicant submits it is unlawful to require knowledge of a third language in the case of officials who, like the applicant, were appointed before that date.

The third plea alleges infringement of the principles of sound administrative management, effectiveness and the protection of legitimate expectations. The applicant submits *inter alia* that, in the implementation of Article 45(2) of the Staff Regulations, the Commission did not show all the due care and attention necessary and did not meet the legitimate expectations of officials eligible for promotion under the 2006 promotion procedure. Specifically, the Commission failed to adopt adequate transitional provisions and to take the necessary measures in due time to enable the applicant to learn a third language and thus be eligible for promotion.

Action brought on 17 September 2007 — Acosta Iborra and Others v Commission

(Case F-93/07)

(2007/C 283/80)

*Language of the case: French***Parties***Applicants:* Acosta Iborra and Others (Alkmaar, Netherlands) (represented by: N. Lhoëst, lawyer)*Defendant:* Commission of the European Communities