

Action brought on 3 October 2007 — Petrilli v Commission

(Case F-98/07)

(2007/C 297/96)

*Language of the case: French***Parties***Applicant:* Nicole Petrilli (Sint Stevens Woluwe, Belgium) (represented by: J.L. Lodomez, lawyer)*Defendant:* Commission of the European Communities**Form of order sought**

- declare the present action for annulment admissible and well founded;
- annul the decision of 20 July 2007 by which the appointing authority dismissed the applicant's request, brought on the basis of Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations'), for the renewal of her contract in DG 'Research' of the Commission;
- annul any decision that the Commission may make on the complaint, brought by the applicant in parallel to the present action and to an action to stay the appointing authority's decision of 20 July 2007;
- declare the present action for damages admissible and well founded;
- order the Commission to permit the applicant to return to her post as a member of the contract staff in Unit 'T2' of DG 'Research' for a period of 18 months; couple with that order a periodic penalty payment of EUR 1 000 for each day of delay;
- order the Commission to pay the applicant, by way of damages for the material loss caused by the loss of remuneration as a consequence of the refusal to renew her contract, a sum corresponding to the remuneration which she would have received if she had been able to continue her contract as a member of the contract staff until the expiration of the three years;
- order the Commission to make good the additional loss suffered by the applicant as a result of the loss of a chance of obtaining a contract for an indefinite period in the future Research Executive Agency (REA), following the lack of renewal of the abovementioned contract and the denial to her of the possibility of completing her mission in the Commission and of deepening thereby her experience by continuing to carry out that mission;

- order the Commission to pay the applicant, as compensation for the non-material loss caused by the decision not to renew her contract, a sum the amount of which is to be determined by the Tribunal, provisionally set at EUR 1, subject to an express reservation that that sum may be increased in the course of proceedings;
- order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

In support of her action, the applicant relies on four pleas in law, the first of which alleges breach of the principle of legality and Article 88 of the Conditions of Employment of Other Servants (CEOS). The applicant submits that the decision refusing to renew her contract as a member of the contract staff, taken on the basis of the Commission decision of 28 April 2004 on the maximum duration for the recourse to non-permanent staff in the Commission services, precludes the operation of Article 88 of the CEOS which would allow her contract to be renewed for a new period of 18 months. The decision of 28 April 2004 is illegal inasmuch as it introduces restrictions on the rights laid down by the provisions of the Staff Regulations.

The second plea in law alleges breach of the principle of sound administration, of the duty to have regard to the interests of members of staff and to the interests of the service. The applicant submits that the contested decision does not take into account her personal situation, the interests of the service or those of the future agency which is to be established.

The third plea in law alleges a failure to state sufficient reasons and an infringement of Article 3b of the CEOS. The applicant submits in particular that the automatic refusal to renew her contract, because she had reached the ceiling of six years laid down in the decision of 28 April 2004, is counter to the philosophy of Article 3c of the CEOS, which is founded on the wish to employ persons under a contract for a fixed period in order to fulfil tasks in specialised fields for the time necessary for the accomplishment of a specific task.

The fourth plea in law alleges that the decision of 28 April 2004 infringes Council Directive 1999/70/EC of 28 June 1999 (OJ 1999 L 175, p. 43), the general principles of European labour law, the social rights of workers and, in particular, the principle of stability in employment and the principle of non-discrimination. As regards the last of those, the applicant submits that the ceiling of six years applies only to members of the contract staff falling under Article 3b of the CEOS, whilst those falling under Article 3a of the CEOS have the possibility of having an indefinite contract.