Reports of Cases

JUDGMENT OF THE CIVIL SERVICE TRIBUNAL (Second Chamber)
30 September 2010

Case F-36/05

Gudrun Schulze
v
European Commission

(Civil service — Officials — Appointment — Candidates placed on a reserve list prior to the entry into force of the new Staff Regulations — Transitional rules governing classification in grade at the time of recruitment — Classification in step — Article 32 of the Staff Regulations — Articles 2, 5 and 12 of Annex XIII to the Staff Regulations — Discrimination on grounds of age — Equal pay for work of equal value — Principle of good administration — Duty to have regard for the welfare of officials)

Application: brought under Articles 236 EC and 152 EA, in which Ms Schulze seeks: primarily, annulment, first, of the Commission's decision of 8 February 2005 rejecting her complaint and, second, of the Commission's decision of 11 October 2004 classifying her in grade A* 6, step 2; alternatively, an order that the Commission pay her damages.

Held: The application is dismissed. Each party is to bear its own costs.

Summary

1. Officials — Status of official — Conditions for acquiring
(Staff Regulations, Art. 3)

2. Officials — Recruitment — Appointment in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional provisions for classification in grade
(Staff Regulations, Arts 7(1), 27, first para., and 29(1); Annex XIII, Art. 12(3); Council Regulation No 723/2004)

3. Officials — Recruitment — Appointment in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional provisions for classification in grade
(Staff Regulations, Annex XIII, Art. 12(3); Council Regulation No 723/2004)

4. Officials — Assignment — Correspondence between grade and post — Determination of level at which post is to be filled
(Staff Regulations, Arts 5(4), 7(1), and 62, first para.; Annex I; Council Regulation No 723/2004)

5. Officials — Principles — Administration's duty to have regard for the interests of officials — Principle of sound administration — Limits
(Staff Regulations, Annex XIII, Art. 12(3))

1. It is clear from Article 3 of the Staff Regulations that the appointment of an official necessarily has its origin in a unilateral instrument of the appointing authority stating the date on which the appointment takes effect and the post to which the official is appointed. It is only after being the subject of such a decision that a successful candidate in an open competition can claim the status of official and therefore demand the application to him of provisions of the Staff Regulations.

(see para. 48)

See:

T-58/05 *Centeno Mediavilla and Others* v *Commission* [2007] ECR II-2523, paras 54 and 55

2. If all further development of legislation is not to be prevented, the principle of equality cannot hinder the legislature's freedom to make at any time such amendments to the Staff Regulations as it considers to be consistent with the interests of the service, even if those amendments are less favourable.

Consequently, the legislature has been able, in the context of the reform of the Staff Regulations, to provide that successful candidates in competitions who would, prior to 1 May 2004, have been recruited at grade A 7 would now be appointed at grade A*6, and at the same time to reduce the salaries relating to those grades.

In taking that action the legislature did not infringe the principle of equality and, in particular, the prohibition of any discrimination on grounds of age, in so far as the table of corresponding grades given in Article 12(3) of Annex XIII to the Staff Regulations and the table of basic monthly salaries are manifestly unconnected to any taking into account, directly or indirectly, of the age of the persons concerned.

Furthermore, in accordance with the rule flowing from Article 7(1), the first paragraph of Article 27 and Article 29(1) of the Staff Regulations, according to which the level of posts is determined according to their character, their importance and their scope, regardless of the qualifications of those concerned, the table of corresponding grades given in Article 12(3) of Annex XIII to the Staff Regulations distinguishes the basic grade A*5 from the higher grade A*6 in order to take account of the experience required for posts at that level.

It cannot therefore be contended that it is contrary to Article 12(3) of Annex XIII to the Staff Regulations to take professional experience into consideration; on the contrary, it requires the appointing authority to take account of that experience in the interests of the service when determining the level of the posts to be filled.

(see paras 58-62)

See:

C-443/07 P *Centeno Mediavilla and Others* v *Commission* [2008] ECR I-10945, para. 83

T-121/97 *Ryan* v *Court of Auditors* [1998] ECR II-3885, paras 98 and 104; T-135/05 *Campoli* v *Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527, para. 105; T-58/05 *Centeno Mediavilla and Others* v *Commission*, paras 86, 89 and 113

F-54/06 *Davis and Others* v *Council* [2007] ECR-SC I-A-1-165 and II-A-1-911, para. 81

3. The right of employees of the same employer performing work of equal value to receive the same remuneration constitutes a specific expression of the general principle of equality, which it is the task of the Civil Service Tribunal to ensure is observed. That right is also set out in Article 7 of the International Covenant on Economic, Social and Cultural Rights and in Convention No 111 of the International Labour Organisation.

However, the principle of equal treatment does not prevent comparable situations from being treated differently if the difference is justified by objective and relevant circumstances which the court can review.

As part of the reform of the Staff Regulations the legislature amended the correspondence between grades and posts, in particular by adopting Article 12(3) of Annex XIII to the Staff Regulations, since, by its very nature, a transitional provision derogates from certain rules of the Staff Regulations whose application is necessarily affected by the change of system.

That being so, officials who were appointed as officials after the reform of the Staff Regulations came into force cannot be regarded as having been in the same legal position as those recruited prior to 1 May 2004, whose appointment was governed by the old Staff Regulations.

Thus, in the light of the reform of the grading structure, the legislature did not infringe the principle of equal pay for work of equal value in granting to officials employed after that reform remuneration linked to the grade in which they were classified pursuant to Article 12(3) of Annex XIII to the Staff Regulations, which is less favourable than that relating to the previous grades in which officials recruited prior to 1 May 2004 were classified.

Consequently, the fact that assistants or administrators recruited prior to 1 May 2004 would be better paid that those recruited as officials after that date does not infringe the principle of equal pay for work of equal value.

(see paras 74-79)

See:

C-381/99 *Brunnhofer* [2001] ECR I-4961, para. 28; C-443/07 P *Centeno Mediavilla and Others* v *Commission*, , paras 77 to 79 and 105

T-58/05 *Centeno Mediavilla and Others* v *Commission*, cited above, paras 75, 80, 114, 126 and 129

4. It follows from Article 7(1) in conjunction with the first paragraph of Article 62 of the Staff Regulations, according to which an official is entitled to the remuneration carried by his grade and step, that, once the grade and therefore the salary level of the official have been determined, he cannot be given a post which does not correspond to that grade. In other words, the grade and therefore the salary to which an official is entitled determine the type of work he may be given. Consequently, the principle that grade and post must correspond also allows any official to refuse assignment to a post which does not correspond to his grade, and thus, in the end, to refuse duties which do not correspond to his remuneration.

The previous statement is not invalidated by the fact that Article 5(4) of the Staff Regulations and Annex I thereto, in the version resulting from Regulation No 723/2004 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants, do not establish a fixed correspondence between a given function and a given grade. Those provisions do not alter the principle flowing from Article 7(1) of the Staff Regulations, according to which the level of a post to be filled must be decided in consideration of the importance of the tasks conferred on the function in question and solely in the interest of the service. They simply mean that the appointing authority is not

obliged to fix the precise grade of a post to be filled in a notice of vacancy. The appointing authority is still required, however, in exercising its broad discretion, to ensure that the range of grades referred to in the notice of vacancy gives a sufficient indication of the importance of the duties involved, and that appointment in one of those grades remains objective in view, in particular, of the importance of the duties to be performed.

(see paras 80-81)

See:

T-18/90 *Jongen* v *Commission* [1991] ECR II-187, para. 27; T-56/07 P *Commission* v *Economidis* [2008] ECR-SC I-B-1-31 and II-B-1-213, paras 82 to 86; T-572/08 P *Commission* v *Traore* [2009] ECR-SC I-B-1-39 and II-B-1-223, paras 38, 40 and 41

5. The principle of sound administration does not have a binding force superior to that of a regulation. The same applies to the administration's duty to have regard for the welfare of officials, which reflects the balance of reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants and which must therefore always be circumscribed by compliance with the rules in force.

Consequently, because of the position held in the hierarchy of norms by the principle of sound administration and the duty to have regard for the welfare of officials, an official appointed during the period between 1 May 2004 and 30 April 2006 cannot seek to rely on them to obtain a different outcome from that arising from Article 12(3) of Annex XIII to the Staff Regulations, since the institution's powers are circumscribed by that provision.

(see paras 86-87)

See:

T-123/89 *Chomel* v *Commission* [1990] ECR II-131, para. 32; T-65/92 *Arauxo-Dumay* v *Commission* [1993] ECR II-597, para. 37; T-97/92 and T-111/92 *Rijnoudt and Hocken* v *Commission* [1994] ECR-SC I-A-159 and II-511, para. 104; T-135/05 *Campoli* v *Commission* [2006] ECR-SC I-A-2-297 and II-A-2-1527, para. 149

F-43/05 *Chassagne* v *Commission* [2007] ECR-SC I-A-1-27 and II-A-1-139, para. 111