Reports of Cases

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

Case F-29/05

Jean-François Vivier
v
European Commission

(Civil service — Members of the temporary staff — Classification in grade — Grades laid down in the call for applications — Amendment of the rules governing classification of staff — Transitional provisions — Article 12(3) of Annex XIII to the Staff Regulations — Application by analogy)

Application: brought under Articles 236 EC and 152 EA, in which Mr Vivier seeks annulment of the Commission's decision of 21 July 2004 classifying him at grade A*6.

Held: The Commission's classification decision as annexed to the amendment of 21 July 2004 to the temporary staff contract signed by the applicant on 10 June 2004 is annulled. The Commission is ordered to bear its own costs and to pay the costs of the applicant.

Summary

1. Procedure — Introduction of new pleas during the proceedings — Conditions
(Rules of Procedure of the Court of First Instance, Art 44(1)(c) and 48(2))

2. European Union law — Transitional provisions — Restrictive interpretation

3. Officials — Members of the temporary staff — Recruitment — Classification in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional provisions for classification in grade
(Staff Regulations, Art. 5(1) to (4); Annex XIII, Art. 12(3); Conditions of Employment of Other Servants, Art. 10, second para.; Council Regulation No 723/2004)

1. It follows from Article 44(1)(c) in conjunction with Article 48(2) of the Rules of Procedure of the Court of First Instance that the original application must contain the subject-matter of the proceedings and a summary of the pleas in law relied on, and that new pleas in law may not be introduced in the course of the proceedings unless they are based on matters of law or of fact which come to light in the course of the procedure. However, a plea which may be regarded as amplifying a plea made previously, whether directly or by implication, in the original application, and which is closely connected therewith, will be declared admissible.

(see para. 32)

See:

T-495/04 *Belfass* v *Council* [2008] ECR II-781, para. 87

2. A transitional provision must, in principle, be interpreted restrictively, which is incompatible a priori with an application by analogy. A restrictive interpretation is justified by the fact that the transitional provisions derogate from the permanent rules and principles that would directly apply to the situations at issue in the absence of those provisions.

Where there are no permanent provisions, however, the administration may apply Article 12(3) of Annex XIII to the Staff Regulations by analogy without disregarding its transitional nature.

(see paras 67-70)

See:

77/82 *Peskeloglou* [1983] ECR 1085, paras 11 to 15; C-267/95 and C-268/95 *Merck and Beecham* [1996] ECR I-6285, paras 23 and 24; C-240/05 *Eurodental* [2006] ECR I-11479, paras 52 to 54; C-462/05 *Commission* v *Portugal* [2008] ECR I-4183, paras 53 and 54

T-252/97 *Dürbeck* v *Commission* [2000] ECR II-3031, paras 66 and 70

3. In the absence of any transitional provision in Regulation No 723/2004 amending the Staff Regulations of Officials and the Conditions of Employment of Other Servants, in order to determine the classification in grade of members of the temporary staff recruited after that regulation came into force on 1 May 2004 on the basis of calls for applications published before that date, and in the absence of any internal provisions applicable for that purpose, only the second paragraph of Article 10 of the Conditions of Employment may form the basis for that classification.

It follows from Article 10 of the Conditions of Employment that the administration has discretion to determine the grade of members of the temporary staff. In the absence of any internal provision on the subject, that discretion is circumscribed solely by the obligation to employ those staff in the grade announced in the call for applications and by the need to adhere to the structure of the categories or function groups laid down in Article 5(1) to (4) of the Staff Regulations.

That being so, and where the grade announced in the call for applications has been repealed, an institution may reasonably be guided by the solution adopted by the Community legislature when adopting Annex XIII to the Staff Regulations and apply by analogy Article 12(3) of that annex, which relates to the classification of officials included in a list of suitable candidates before 1 May 2006 and recruited between 1 May 2004 and 30 April 2006.

(see paras 60, 64, 65, 69, 70, 72)

See:

F-21/06 *Da Silva* v *Commission* [2007] ECR-SC I-A-1-179 and II-A-1-981, paras 64, 68 and 79