JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
3 April 2008 *

(Staff cases — Contract staff — Classification in grade — Function group IV — Diploma — Professional experience)

In Case F-68/06,

ACTION under Articles 236 EC and 152 EA,

Reint J. Bakema, a member of the contract staff of the Commission of the European Communities, residing in Zuidlaren (Netherlands), represented by L. Rijpkema and A. Kootstra, lawyers,

applicant,

v

Commission of the European Communities, represented by J. Currall and M. Velardo, acting as Agents,

defendant,

* Language of the case: English.

THE TRIBUNAL (Second Chamber),

composed of S. Van Raepenbusch (Rapporteur), President, I. Boruta and H. Kanninen, Judges,

Registrar: S. Cidéron, assistant,

having regard to the written procedure and further to the hearing on 30 January 2008,

gives the following

Judgment

1 By an application received by fax at the Registry of the Tribunal on 19 June 2006 (the original being lodged on 22 June 2006), Mr Bakema, a member of the contract staff of the Commission of the European Communities, seeks, first, the annulment of the decision of the Authority Authorised to Conclude Contracts of Engagement ('AACC') rejecting his complaint against the decision by which the AACC fixed his classification in function group IV at grade 14, step 1, under a contract hiring him as a member of the contract staff which was signed on 25 October 2005 and took effect on 1 November 2005 ('the contested decision') and that the Commission be ordered to classify him in grade 16 of function group IV and, secondly, the award of an appropriate sum by way of damages and interest.

Legal context

2 Contract staff are a new category of staff inserted in the Conditions of employment of other servants of the European Communities ('CEOS'), specifically, in the third indent of the second paragraph of Article 1 thereof, by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the Staff Regulations of officials of the European Communities and the CEOS (OJ 2004 L 124, p. 1), which entered into force on 1 May 2004.

3 Pursuant to recital (36) in the preamble to Regulation No 723/2004, '[contract] staff, whose responsibilities are of a more limited nature, will generally be required to work under the supervision of officials or temporary staff. They will be employed inter alia with a view to eventually replacing auxiliaries and Category D officials in the institutions, Commission Offices and Representations, Delegations and Agencies and also in executive agencies and other bodies created by a specific legal act'.

4 Pursuant to Article 3a(1) of the CEOS:

'For the purposes of these Conditions of Employment, "contract staff" means staff not assigned to a post included in the list of posts appended to the section of the budget relating to the institution concerned and engaged for the performance of full-time or part-time duties:

...

(d) in Representations and Delegations of Community institutions,

...'

5 The contract staff category is the subject-matter of title IV of the CEOS ('Contract staff'), which fixes, inter alia, their conditions of engagement, including the rules on classification.

6 Under Article 80(1) of the CEOS, '[c]ontract staff shall be subdivided into four function groups corresponding to the duties to be performed. Each function group shall be subdivided into grades and steps'.

7 The table in Article 80(2) of the CEOS describes the tasks covered by the various function groups. Thus, function group IV, which includes grades 13 to 18, covers the tasks designated as '[a]dministrative, advisory, linguistic and equivalent technical tasks, performed under the supervision of officials or temporary staff'.

8 Under Article 82(2) of the CEOS:

'Recruitment as a member of the contract staff shall require at least:

…

(c) in function group IV:

(i) a level of education which corresponds to completed university studies of at least three years attested by a diploma, or

(ii) where justified in the interest of the service, professional training of an equivalent level.'

9 Article 86 of the CEOS provides:

'1. Contract staff referred to in Article 3a shall only be recruited:

(i) in grades 13, 14, or 16 for function group IV;

…

The grading of such contract staff within each function group shall take account of the qualifications and experience of the persons concerned. To address specific needs of the institutions, labour market conditions prevailing in the Community may also be taken into account. Within their grade, such contract staff shall be recruited in the first step.

2. Where a member of the contract staff referred to in Article 3a moves to a new post within a function group, he shall not be classified in a lower grade or step than in his former post.

Where a member of such contract staff moves to a higher function group, he shall be classified at a grade and step such that his remuneration is at least equal to that to which he was entitled under the preceding contract.

The same provisions shall apply where the member of such contract staff concludes a new contract with an institution or body immediately following a preceding contract for such contract staff with a different institution or body.'

10 The general implementing provisions of 7 April 2004 on the procedures governing the engagement and the use of contract staff at the Commission (*Administrative Notices* No 49-2004 of 1 June 2004), as amended on 27 July 2004 and on 17 December 2004 ('the GIP'), define in Article 2(1)(d) thereof the minimum qualifications for access to function group IV as follows:

'in function group IV: completed university studies of at least three years attested by a diploma and appropriate professional experience of at least one year'.

11 Article 7(1)(d) of the GIP governs the classification of contract agents in function group IV as follows:

'[The staff referred to in Article 3a of the CEOS] shall be engaged:

…

(d) in function group IV:

— in grade 13 if the person has professional experience of up to seven years;

— in grade 14 if the person has professional experience of more than seven years;

— in grade 16 if the person has professional experience of more than twenty years.'

12 Article 7(3) of the GIP states:

'In order to be taken into account professional experience must have been acquired in an activity corresponding at least to the level of qualification required for the access to the function group and having a link with one of the institution's sectors of activity. It shall be taken into account from the date on which the person fulfils the minimum qualifications for engagement set out in Article 2 (including, where applicable, any professional experience required by that Article).'

Factual background to the dispute

13 The applicant is the holder of a diploma in Tropical Crop Science from the Agricultural High School (Landbouwhogeschool) of Wageningen (Netherlands). He was awarded that diploma in 1983, after having passed the 'doctoraalexamen'. He had previously passed an intermediate exam, the 'kandidaatsexamen', in 1979.

14 In January 2004, the applicant was recruited by the Commission to its Delegation in the Republic of Uganda, under a contract for the employment of local technical assistance staff, governed by the applicable national law. That contract expired on 31 October 2005.

15 On 10 October 2005, the applicant was offered a contract as a member of the contract staff for a period of three years, running from 1 November 2005, with classification in function group IV, grade 14, step 1, and with a view to carrying out identical duties to those which he had carried out before, but in return for less remuneration.

16 On 25 October 2005, the applicant signed the contract as proposed. At the same time, he submitted a request to the administration that he be classified in grade 16, on the basis of his 22 years of professional experience. He pointed out that he had, inter alia, worked as a researcher in Surinam between October 1979 and December 1980, after passing the 'kandidaatsexamen'.

17 By a note of 15 November 2005, the administration replied that the applicant's professional experience could be calculated only from the time when he obtained his university diploma, in 1983. In his case, that experience totalled 18 years and a little over 6 months, which meant that he had to be classified in grade 14, classification in grade 16 requiring 20 years' experience.

18 On 17 November 2005, the applicant sent a further letter to the administration on the matter of his classification in grade, asserting that his 'kandidaatsdiploma' obtained in 1979 complied fully with Article 82(2) of the CEOS, with the result that his subsequent research work in Surinam should be counted as professional experience.

19 That further request was rejected by the administration's note of 23 November 2005.

20 On 5 January 2006, the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') against the AACC's decision to classify him in grade 14 of function group IV.

21 That complaint was rejected by a decision of the AACC of 22 March 2006, received by the applicant on 29 March 2006.

Forms of order sought

22 The applicant claims that the Tribunal should:

— annul the AACC's decision of 22 March 2006;

— order the AACC to classify him in function group IV, at grade 16;

— and/or rule that he is entitled to an adequate sum in respect of damages and interest.

23 The Commission contends that the Tribunal should:

— dismiss the action;

— make an appropriate order as to costs.

On the head of claim in the application that the AACC be ordered to classify the applicant in function group IV, at grade 16

24 It is settled case-law that, in proceedings brought under Article 91 of the Staff Regulations, the Community judicature cannot, without encroaching on the powers of the administration, make declarations or findings of principle or issue directions to Community institutions (see, to that effect, Case T-156/89 *Valverde Mordt* v *Court of Justice* [1991] ECR II-407, paragraph 150, and Case T-583/93 *P* v *Commission* [1995] ECR-SC I-A-137 and II-433, paragraphs 17 and 18; order in Case F-55/05 *Voigt* v *Commission* [2006] ECR-SC I-A-1-15 and II-A-1-51, paragraph 25).

25 Consequently, the head of claim in the application that the AACC be ordered to classify the applicant in function group IV, at grade 16, must be rejected as inadmissible.

The action for annulment

26 In support of his action, the applicant puts forward in substance three pleas, alleging respectively:

— infringement of Article 82 of the CEOS and of Article 2 of the GIP;

— an error of assessment in the calculation of the duration of the professional experience acquired as a self-employed worker;

— infringement of Article 86(2) of the CEOS and of the principle of the protection of legitimate expectations.

Preliminary observation

27 The present action, even if formally directed against the AACC's decision of 22 March 2006 rejecting the applicant's complaint, has the effect of bringing before the Tribunal the acts adversely affecting the applicant against which the complaint was submitted. The action must therefore be regarded as being directed against the decision by which the AACC fixed the classification and remuneration of the applicant under the contract as a member of the contract staff, which was signed on 25 October 2005 and took effect on 1 November 2005 (see, inter alia, Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8).

The first plea, alleging infringement of Article 82 of the CEOS and of Article 2 of the GIP

Arguments of the parties

28 The applicant points out that, under Article 82(2) of the CEOS, classification in function group IV requires 'a level of education which corresponds to completed university studies of at least three years attested by a diploma'.

29 In his submission, the 'kandidaatsexamen' awarded to him by a university in the Netherlands after three years' of studies attests to completed university studies, with the result that his professional experience should be calculated from 1979. The Commission cannot, in this connection, rely on a 'table of comparable diplomas' used by its services, which is not an official document and cannot, in any event, override the terms of the CEOS or the GIP.

30 The Commission submits that, in order to ensure that the principle of equal treatment is observed by taking into account the objective differences between the national education systems, in the application of the provisions in force on recruitment and grading of officials and staff of the Communities, the administration has available to it a table of equivalences of diplomas, which is based on information provided by the relevant authorities in the various Member States.

31 It is apparent from the table of equivalences of diplomas used by the administration that passing a 'kandidaatsexamen' is not sufficient for access to the A* category as an official (or, accordingly, for entry to function group IV as a member of the contract staff). It is an intermediary diploma, which does not attest to completed university studies.

32 The Commission notes in this connection that many other universities in other Member States award final degrees in engineering, but without the individual years or individual modules of the course being certified by an intermediate diploma. Candidates who hold such a degree cannot be treated less favourably than the applicant merely because of national particularities of this kind.

33 The Commission adds that whether a given diploma is regarded as the diploma certifying 'completed' university studies depends upon the national provisions which govern that diploma (see Case 108/88 *Jaenicke Cendoya* v *Commission* [1989] ECR 2711, paragraph 14). Under the education system of the Netherlands, the diploma awarded on passing the 'doctoraalexamen' certifies completed university studies. It is therefore that diploma which the applicant needed to produce to gain access to function group IV.

34 Consequently, only the experience acquired after obtaining the 'doctoraalexamen' in September 1983 could, in the present case, be taken into account for the purposes of classifying the applicant.

Findings of the Court

35 Under Article 82(2) of the CEOS, classification in function group IV requires the applicant to have a diploma attesting to 'a level of education which corresponds to completed university studies of at least three years'.

36 Article 2(1)(d) of the GIP is more demanding since it requires, for entry to function group IV, not only completed university studies of at least three years attested by a diploma but also 'appropriate professional experience of ... one year'. Furthermore, under Article 7(1)(d) and 7(3) of the GIP, classification of members of the contract staff in that function group occurs at grade 14 if the applicant has professional experience of more than 7 years, or at grade 16 if the person has professional experience of more than 20 years, with the requirements that the professional experience has been 'acquired in an activity corresponding

at least to the level of qualification required for the access to the function group', has 'a link with one of the institution's sectors of activity' and is to be taken into account 'from the date on which the person fulfils the minimum qualifications for engagement'.

37 The Commission, in its pleadings, drew a parallel with the conditions for entry to the A* category of officials (which from 1 May 2006 became function group AD). In that connection, it must be pointed out that as regards appointment to a post as an official in that function group, Article 5(3)(b) and (c) of the Staff Regulations actually draws a distinction according to whether the applicant is classified in grades 5 and 6 or grades 7 to 16 as follows:

— in the first case, governed by Article 5(3)(b), the official must have 'a level of education which corresponds to completed university studies of at least three years attested by a diploma' (or, 'where justified in the interest of the service, professional training of an equivalent level');

— in the second case, governed by Article 5(3)(c), the official must have 'a level of education which corresponds to completed university studies attested by a diploma when the normal period of university education is four years or more', or 'a level of education which corresponds to completed university studies attested by a diploma and appropriate professional experience of at least one year when the normal period of university education is at least three years' (or also, 'where justified in the interests of the service, professional training of an equivalent level').

38 At the hearing, the agent of the Commission submitted, in response to a question from the Tribunal, that the same terms used in Article 82(2) of the CEOS for access to function group IV and in Article 5(3)(b) of the Staff Regulations for access to grades 5 and 6 of function group AD should be interpreted in the same way and that the distinction in Article 5(3)(b) and (c) of the Staff Regulations as regards the level of qualifications required between grades 5 and 6, on the one hand, and grades 7 to 16, on the other, might have been prompted by the new structure of higher education recommended in Europe by the 'Bologna process', signed by the Education Ministers of 29 European countries (Bologna

Declaration of 19 June 1999). That process includes two main cycles leading, in the first case, to a 'Bachelor's degree' and, in the second, to a 'Master's degree'.

39 In fact, it is apparent from the table of equivalences of the types of diplomas issued by the Member States, which sets out the qualifications required in principle for access to, inter alia, grades 5 to 16 of the function group AD, used by the administration, which is submitted by the Commission and on which it relies to justify the contested decision, that access to a post which requires the applicant to have a qualification proving university-level studies of at least three years is open to the holder of a 'Bachelor's degree', that is to say, to candidates who have completed merely the first cycle of university studies. The same should therefore be true of access to a post as a member of the contract staff in function group IV, having regard to the identical nature of the terms used in Article 82(2) of the CEOS and Article 5(3)(b) of the Staff Regulations.

40 In the present case, it is apparent from the explanations provided by the parties at the hearing that the Agricultural High School in Wageningen, which provides university-level education and which awarded the applicant the 'kandidaatsexamen' in 1979 and the 'doctoraalexamen' in 1983, today offers a course of first cycle university education leading to a 'Bachelor's degree', completed by a course of second cycle university education leading to a 'Master's degree'.

41 By way of justification for its refusal to take into account, for the purposes of the application of Article 7(1)(d) and 7(3) of the GIP, the applicant's 'kandidaatsexamen', the Commission merely asserted that access to function group IV was allowed only on passing the 'doctoraalexamen', with the result that only the professional experience acquired after the award of that diploma was to be taken into account for the purposes of classifying the applicant.

42 However, the Commission could not, without infringing the scope of Article 82(2) of the CEOS, as clarified by the provisions of Article 5(3)(b) of the Staff Regulations by reason of their identical terms, issue such a refusal without beforehand examining the content of the course leading to the 'kandidaatsexamen', which the applicant passed in 1979, and without determining whether that qualification was capable of corresponding to the qualification which is today referred to as a 'Bachelor's degree' and can attest to completed university studies within the meaning of Article 82(2) of the CEOS and Article 2(1)(d) of the GIP.

43 Consequently, the contested decision must be held to misconstrue the scope of Article 82(2) of the CEOS and should be annulled on that ground, without there being any need to examine the other two pleas put forward in support of the action.

The action for damages

44 It suffices, in this connection, to note that the applicant has not proven any damage for which annulment of the contested decision is not appropriate compensation. Accordingly, the annulment of the contested decision constitutes an appropriate and sufficient sanction in the present case (see Case T-10/99 *Vicente Nuñez* v *Commission* [2000] ECR-SC I-A-47 and II-203, paragraph 48).

Costs

45 Under Article 122 of the Rules of Procedure of the Civil Service Tribunal, the provisions of those Rules on costs are to apply only to cases brought before the Tribunal from the date on which those Rules of Procedure entered into force, namely 1 November 2007. The relevant provisions of the Rules of Procedure of the Court of First Instance on the subject are to continue to apply *mutatis mutandis* to cases pending before the Tribunal before that date.

46 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant did not apply for costs to be awarded against the Commission, each party must be ordered to bear its own costs.

On those grounds,

THE TRIBUNAL (Second Chamber)

hereby:

1. **Annuls the decision by which the Authority Authorised to Conclude Contracts of Engagement classified Mr Bakema in function group IV at grade 14, step 1, under the contract signed on 25 October 2005**

recruiting him to the Commission of the European Communities as a member of the contract staff;

2. Dismisses the remainder of the application;

3. Orders each party to bear its own costs.

Van Raepenbusch Boruta Kanninen

Delivered in open court in Luxembourg on 3 April 2008.

W. Hakenberg
Registrar

S. Van Raepenbusch
President