JUDGMENT OF THE CIVIL SERVICE TRIBUNAL
(Second Chamber)
11 December 2008 *

(Staff cases — Contract staff — Recruitment — Classification in grade — Experience — Qualifications — Equivalence)

In Case F-136/06,

ACTION under Articles 236 EC and 152 EA,

Enzo Reali, a member of the contract staff of the Commission of the European Communities, residing in Florence (Italy), represented by S.A. Pappas, lawyer,

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, President, I. Boruta and H. Kanninen (Rapporteur), Judges,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 16 April 2008,

gives the following

Judgment

1 By application lodged by fax at the Registry of the Civil Service Tribunal on 30 November 2006 (the original being lodged on 4 December 2006), Mr Reali seeks, in substance, the annulment of the decision of the authority authorised to conclude contracts ('he AACC') classifying him at grade 14, step 1, in function group IV, as provided for in his contract of engagement as a member of the contract staff.

Legal context

2 Members of the contract staff constitute a new category of staff included 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 Article 3a(1) of the CEOS provides:

'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:

(a) in an institution to carry out manual or administrative support service tasks,

…'

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

5 Under Article 80(1) of the CEOS, 'Contract 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'.

6 The table in Article 80(2) of the CEOS describes the duties covered by the various function groups. Thus, function group IV, which covers grades 13 to 18, encompasses the duties described as 'Administrative, advisory, linguistic and equivalent technical tasks, performed under the supervision of officials or temporary staff'.

7 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.'

8 Article 82(6) of the CEOS provides:

'Each institution shall adopt general provisions on the procedures for engagement of contract staff in accordance with Article 110 of the Staff Regulations [of Officials of the European Communities], as necessary.'

9 Article 86(1) of the CEOS provides:

'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.'

10 The General Implementing Provisions of 7 April 2004 on the procedures governing the engagement and the use of contract staff at the Commission of the European Communities, published in *Administrative Notice* No 49-2004 of 1 June 2004, as amended by the Decisions of 27 July 2004, 17 December 2004 and 16 December 2005 ('the GIP'), define, in Article 2(1)(d), the minimum qualifications required 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 2(2) of the GIP provides:

'Only diplomas and certificates that have been awarded in EU Member States or that are the subject of equivalence certificates issued by the authorities in the said Member States shall be taken into consideration.'

12 Article 7(1)(d) of the GIP governs the classification of the members of the contract staff referred to in Article 3a of the CEOS in function group IV as follows:

'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.'

13 Under Article 7(3) of the GIP, '[i]n 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[; i]t 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)'.

14 Under Article 7(4) of the GIP, '[i]n the case of a doctorate/PhD the actual duration of the studies shall be taken into account, subject to an upper limit of three years[; i]n the case of other qualifications the statutory duration of the studies shall be taken into account'.

15 The 'Bologna Process', undertaken by the Ministers responsible for education in 29 European countries, concluded in the signature of the 'Bologna Declaration' of 19 June 1999, which advocates the introduction of a new structure of higher education in Europe featuring three cycles ending, as regards the first, with a 'Bachelor's' degree, as regards the second, with a 'Master's' degree and, as regards the third, with a 'Doctoral' degree ('the Bologna Declaration').

16 Article 3(1) of the Decreto del Ministro dell'Istruzione, dell'Università e della Ricerca 22 ottobre 2004, n. 270 (Decree of the Italian Minister for Education, Universities and Research of 22 October 2004, n. 270, 'the Decree of 22 October 2004'), which replaced the Decreto del Ministro dell'Università e della Ricerca Scientifica e Tecnologica 3 novembre 1999, n. 509, Regolamento recante norme concernenti l'autonomia didattica degle atenei (Decree of the Minister for Universities and Scientific and Technological Research of 3 November 1999, n. 509, Regulation adopting certain provisions concerning the educational independence of universities, 'the Decree of 3 November 1999'), provides:

'Universities shall confer the following degrees:

(a) the Bachelor's degree;

(b) the Master's degree.'

['Le università rilasciano i seguenti titoli:

(a) laurea (L);

(b) laurea magistrale (L.M.).']

17 Article 3(6) of the Decree of 22 October 2004 states that 'the Master's course is designed to give the student a high level of training, required for the exercise of highly qualified activites in specific fields' ('[I]l corso di laurea magistrale ha l'obiettivo di fornire allo studente una formazione di livello avanzato per l'esercizio di attività di elevata qualificazione in ambiti specifici').

18 Article 7 of the Decree of 22 October 2004, relating to the award of degrees ('conseguimento dei titoli di studio'), reads as follows:

1. To obtain a Bachelor's degree, the student must have acquired 180 credits, including those relating to the obligatory knowledge of the Italian language

and another language of the European Union, subject to the special rules on the protection of linguistic minorities. That knowledge must be checked in accordance with the procedure laid down by the pedagogical rules of the university by reference to the levels required in respect of each language.

2. In order to obtain a Master's degree, the student must have acquired 120 credits.

3. Ministerial Decrees establish the number of credits which the student must have acquired in order to obtain the specialist degree, subject to the provisions laid down by specific legislative provisions or European Union directives.

...'

('1. Per conseguire la laurea lo studente deve aver acquisito 180 crediti, comprensivi di quelli relativi alla conoscenza obbligatoria, oltre che della lingua italiana, di una lingua dell'Unione europea, fatte salve le norme speciali per la tutela delle minoranze linguistiche. La conoscenza deve essere verificata, secondo modalità stabilite dai regolamenti didattici di ateneo, con riferimento ai livelli richiesti per ogni lingua.

2. Per conseguire la laurea magistrale lo studente deve aver acquisito 120 crediti.

3. I decreti ministeriali determinano il numero di crediti che lo studente deve aver acquisito per conseguire il diploma di specializzazione. Sono fatte salve le disposizioni previste da specifiche norme di legge o da direttive dell'Unione europea.

…')

19 Pursuant to Article 8 of the Decree of 22 October 2004, the normal duration of studies needed to obtain the 'Laurea' is three years, while two additional years of study are required to obtain the 'Laurea magistrale'.

20 Article 13 of the Decree of 22 October 2004, on transitional and final provisions, provides:

'1. The present Decree replaces the Decree [of 3 November 1999].

…

7. Those who have obtained, pursuant to the provisions referred to in paragraph (1), the degrees of "Laurea", "Laurea magistrale" or "Laurea specialista", or a research doctorate, may respectively use the academic titles of "Dottore", "Dottore magistrale" and "Dottore di recerca". The title of "Dottore magistrale" may also be used by those who have obtained the degree of "Laurea" under the provisions in force prior to the Decree ... of 3 November 1999.'

('1. Il presente decreto sostituisce il decreto del Ministro dell'[U]niversità e della Ricerca Scientifica e Tecnologica 3 novembre 1999, n. 509.

…

7. A coloro che hanno conseguito, in base agli ordinamenti didattici di cui al comma 1, la laurea, la laurea magistrale o specialistica e il dottorato di ricerca, competono, rispettivamente, le qualifiche accademiche di dottore, dottore magistrale e dottore di ricerca. La qualifica di dottore magistrale compete, altresì, a coloro i quali hanno conseguito la laurea secondo gli ordinamenti didattici previgenti al decreto ministeriale 3 novembre 1999, n. 509.')

Factual background to the dispute

21 On 9 August 1985, the applicant obtained the 'Laurea in scienze agrarie' (degree in agricultural sciences) at the University of Florence (Italy), on completion of four years of studies.

22 On 28 April 2006, the Commission offered the applicant, who had worked for it for several years, a fixed-term contract as a member of the contract staff which was to end on 30 April 2007. That contract was signed on the same day and took effect on 1 May 2006. It was stipulated in the contract that the applicant was employed in function group IV and classified at grade 14, step 1.

23 On 7 July 2006, the applicant brought a complaint under Article 90(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') in which he contested his classification and requested classification at a higher grade, taking the view that his professional experience exceeded the 20 years required for classification at grade 16.

24 By decision of 30 August 2006, the AACC rejected the complaint.

Forms of order sought and procedure

25 The applicant claims that the Tribunal should:

— annul the AACC's decision of 30 August 2006 rejecting his complaint;

— order the Commission to pay the costs.

26 The Commission contends that the Tribunal should:

— dismiss the application;

— make an appropriate order as to costs.

27 Within the context of measures of organisation of procedure, the Tribunal, pursuant to Article 55(2)(d) of its Rules of Procedure, asked the Commission to send to it the relevant existing documents which outlined the implementation of the 'Bologna Process' in the Member States.

28 By letter of 12 March 2008, the Commission indicated to the Tribunal that three documents met its request. However, in view of the length of those documents, the Commission merely gave references to internet sites providing access to them.

29 After having consulted those documents by electronic means, the Tribunal formed the view that they were not necessary for the examination of the case. Consequently, they were not placed on the file.

30 At the hearing, the applicant's representative requested authorisation to lodge a copy of the Decreto Interministeriale 5 maggio 2004, Equiparazione dei diplomi di laurea (DL) secondo il vecchio ordinamento alle nuove classi delle lauree specialistiche (LS), ai fini delle partecipazione ai concorsi pubblici (Interministerial Decree of 5 May 2004, Equivalence of Bachelor's degrees under the old system with the new classes of specialised degrees for the purposes of participation in open competitions, 'the Decree of 5 May 2004'). He also sought leave to lodge a document, which he himself had drafted, describing the reform of the university system which took place in Italy following the 'Bologna Process'.

31 The Tribunal granted the applicant's requests at the hearing, while nevertheless stating that the decision on the admissibility of those new documents would be reserved.

Admissibility of the documents produced by the applicant after the closure of the written procedure

32 As stated in paragraph 30 above, at the hearing the applicant's representative sought leave to lodge a copy of the Decree of 5 May 2004 and a document, which he himself had drafted, describing the reform of the university system in Italy following the 'Bologna Process'.

33 The Commission objected to those documents being placed on the file on the ground that Article 42 of the Rules of Procedure provides that the parties may offer further evidence in support of their arguments until the end of the hearing, on condition that the delay in offering it is duly justified.

34 In order to establish the applicant's classification in grade, and in the absence of any provision to the contrary, the requirement of possession of a university degree, which follows from the provisions of Article 82(2)(c)(i) of the CEOS, is necessarily to be construed in the light of the definition of that phrase in the legislation of the Member State in which the candidate completed the studies on which he relies (see, to that effect, Case 108/88 *Jaenicke Cendoya* v *Commission* [1989] ECR 2711, paragraph 14; Case T-2/90 *Ferreira de Freitas* v *Commission* [1991] ECR II-103, paragraph 32; and Case T-82/92 *Cortes Jimenez and Others* v *Commission* [1994] ECR-SC I-A-69 and II-237, paragraph 34).

35 Since, in the present case, it is relevant to have regard to the Italian legislation on university qualifications for the purpose of applying the provisions of the CEOS, as the Commission itself submits, the Commission cannot object, on the basis of Article 42 of the Rules of Procedure, to the Tribunal's taking into consideration the provisions of the Decree of 5 May 2004 for the purposes of resolving the dispute.

36 By contrast, the applicant's representative did not adduce adequate grounds in relation to the lodging of the document describing the reform of the university system in Italy following the 'Bologna Process', since he could have presented that description orally. Consequently, that document must be rejected as inadmissible.

The subject-matter of the action

37 In support of his action, the applicant expressly requests the annulment of the AACC's decision of 30 August 2006 rejecting his complaint. In this connection, claims formally directed against the rejection of a complaint have the effect of bringing before the Court the measure against which the complaint was submitted and as such lack any independent content (Case 293/87 *Vainker* v *Parliament* [1989] ECR 23, paragraph 8; Case T-33/91 *Williams* v *Court of Auditors* [1992] ECR II-2499, paragraph 23; Case T-309/03 *Camós Grau* v *Commission* [2006] ECR II-1173, paragraph 43; and Case F-43/06 *Talvela* v *Commission* [2007] ECR-SC I-A-1-249 and II-A-1-1375, paragraph 36).

38 In the present case, the applicant's complaint, brought on 7 July 2006 before the AACC, was directed against the decision classifying him at grade 14, as provided for in his contract of engagement as a member of the contract staff. Consequently, the action must be construed as challenging that decision ('the contested decision').

Substance

39 In support of his action, the applicant raises three pleas alleging: first, infringement of the Community rules on the recognition of higher-education diplomas; second, infringement of the principle of non-discrimination; and, third, a manifest error of assessment and a failure to state reasons. In the context of his third plea, the applicant raises a plea of illegality against certain of the GIP.

40 The arguments set out by the applicant in support of the first two pleas and of the plea alleging a manifest error of assessment are closely linked. Those pleas should therefore be examined together. First of all, however, it is appropriate to examine the admissibility of the plea of illegality directed against certain of the GIP.

Admissibility of the plea of illegality directed against certain of the GIP

Arguments of the parties

41 The applicant claims that Article 82(6) of the CEOS empowers the Commission to adopt implementing measures of a procedural nature only, since it provides that '[e]ach institution shall adopt general provisions on the procedures for engagement of contract staff in accordance with Article 110 of the Staff Regulations, as necessary'. However, Article 2(1)(c) and Article 7(1)(d) and 7(3) and (4) of the GIP go beyond the limits of that authorisation by dealing with substantive requirements. Furthermore, Article 2(1) of the GIP modifies the requirements of Article 82(2)(c) of the CEOS.

42 In response, the Commission first contends that, in his complaint, the applicant challenged neither the method of calculating his professional experience nor the rule on deduction of one year of professional experience. It submits that the applicant's head of argument in this respect is consequently inadmissible.

43 The Commission also maintains that the applicant's arguments are not specific enough to meet the requirements of Article 44 of the Rules of Procedure of the Court of First Instance of the European Communities, applicable *mutatis mutandis* to the Tribunal pursuant to Article 3(4) of Council Decision 2004/752/EC, Euratom, of 2 November 2004 (OJ 2004 L 333, p. 7), pending the entry into force of the Rules of Procedure of the Civil Service Tribunal. Consequently, they must be rejected as inadmissible.

Findings of the Tribunal

44 It is settled case-law that, if they are not to be inadmissible, forms of order sought may be based only on grounds of challenge having the same legal basis as those raised in the complaint (Case T-59/96 *Burban* v *Parliament* [1997] ECR-SC I-A-109 and II-331, paragraph 31; Case T-312/02 *Gussetti* v *Commission* [2004] ECR I-A-125 and II-547, paragraphs 47 and 48; Case F-7/06 *B* v *Commission* [2007] ECR-SC I-A-1-217 and II-A-1-1243, paragraph 24; and order of the Civil Service Tribunal in Case F-60/07 *Martin Bermejo* v *Commission* [2007] ECR-SC I-A-1-407 and II-A-1-2259, paragraph 34) and that a plea raised before the Community Courts must have already been raised in the pre-litigation procedure (Case T-186/01 *Robert* v *Parliament* [2003] ECR-SC I-A-131 and II-631, paragraph 64; Case T-96/04 *Cwik* v *Commission* [2005] ECR-SC I-A-343 and II-1523, paragraph 32; *B* v *Commission*, paragraph 24; and *Martin Bermejo* v *Commission*, paragraph 34).

45 That rule is justified by the very purpose of the pre-litigation procedure, which is to make possible an amicable settlement of disputes between officials and the administration (Case 58/75 *Sergy* v *Commission* [1976] ECR 1139, paragraph 32; Case T-135/05 *Campoli* v *Commission* [2006] ECR-SC II-A-2-1527, paragraph 32; Case F-77/06 *Colovea* v *Paliament* [2007] ECR-SC I-A-1-361 and II-A-1-1999, paragraph 46). The appointing authority must therefore be informed clearly of the complaints raised by the applicant in order to be in a position to propose to the latter an amicable settlement (*Campoli* v *Commission*, paragraph 32; *Colovea* v *Parliament*, paragraph 46).

46 The rule that the complaint must be consistent with the action must, however, not be applied restrictively but with an open mind (Case T-496/93 *Allo* v *Commission* [1995] ECR-SC I-A-127 and II-405, paragraph 27; Case T-4/96 *S* v *Court of Justice* [1997] ECR II-1125, paragraph 99; *Gussetti* v *Commission*, paragraphs 47 and 48; and *B* v *Commission*, paragraph 25). In particular, it has been held that the substance of the complaint is not intended to be strictly and definitively binding for the purposes of the contentious stage of the procedure, provided always that neither the legal basis nor the subject-matter of the complaint is changed in the action brought (Case C-62/01 P *Campogrande* v *Commission* [2002] ECR I-3793, paragraph 35), and that, inter alia, the heads of complaint may be developed by submissions and arguments which do not necessarily appear in the complaint, but which are closely linked to it (Case T-4/92 *Vardakas* v *Commission* [1993] ECR II-357, paragraph 16; Case T-144/03 *Schmit* v *Commission* [2005] ECR-SC I-A-101 and II-465, paragraph 90; and *B* v *Commission*, paragraph 25).

47 In his application, the applicant is essentially raising a plea of illegality against, first, Article 2(1)(d) of the GIP and, second, Article 7(1)(d) and Article 7(3) and (4) of the GIP.

48 The terms of the complaint show clearly that in it the applicant did not claim that the GIP were unlawful. The articles of the GIP against which the plea of illegality invoked in the application is directed are, moreover, not referred to in any way in the complaint.

49 In his complaint the applicant states, first, that, for access to function group IV, the Commission requires a candidate to have a diploma attesting to three years of university studies, the years of studies after that diploma has been awarded being treated as years of professional experience. Secondly, the applicant describes the 'Bologna Process', then the provisions of Italian law under which,

he submits, his diploma is equivalent to five years of studies corresponding to a 'Bachelor's' degree plus a 'Master's' degree. Thirdly, the applicant submits that the length of his professional experience is 20 years and 8 months, which allows him to be classified in grade 16, and not the 19 years and 8 months which led to his classification in grade 14. The applicant's arguments, set out in the complaint, thus seek to demonstrate that his diploma should be counted as including one year of professional experience.

50 Thus, even if interpreted with an open mind, as required by the case-law, the complaint cannot be construed as impliedly or indirectly challenging the legality of the GIP (see, to that effect, *B* v *Commission*, paragraphs 27 to 33, and *Martin Bermejo* v *Commission*, paragraph 37).

51 Consequently, since it was not raised in the complaint, the plea of illegality directed against certain of the GIP must be dismissed as inadmissible.

The pleas alleging infringement of the Community rules on the recognition of higher-education diplomas, infringement of the principle of non-discrimination and manifest error of assessment

Arguments of the parties

52 In the first place, the applicant draws attention to the fact that he was classified in grade 14, the Commission having concluded that he had acquired 19 years and 8 months of professional experience. However, the applicant claims that he should have been classified in grade 16, in accordance with Article 7(1)(d) of the GIP, on the basis that he had 20 years and 8 months of professional experience.

53 In this connection, the applicant maintains that, having regard to the provisions of the Decree of 5 May 2004 and the Decree of 22 October 2004, to the certificate of equivalence of 2 May 2006 issued by the University of Florence, to the letter dated 8 May 2006 from that university and to the letter signed by Professor Mario Falciai, dated 9 May 2006, his diploma of 'Laurea in scienze agrarie' is equivalent to a 'Laurea' (equivalent to a 'Bachelor's' degree and obtained after three years of studies) plus a 'Laurea Magistrale' (equivalent to a 'Master's' degree and obtained on completion of two years of studies after the award of the 'Laurea').

54 In the second place, the applicant points out that, under Articles 149 EC and 150 EC, the European Community's competence in the field of education is limited. The content of teaching and the organisation of education systems, he argues, lie exclusively within the responsibility of the Member States.

55 The applicant claims that the abolition, as between the Member States, of obstacles to the free movement of persons and services is one of the major objectives of the Community, so that nationals of Member States have the opportunity to pursue a profession in a Member State other than that in which they acquired their professional qualification. That is why the Community introduced a system of mutual recognition of diplomas rather than interfering in the assessment of diplomas by the Member States. That is the subject-matter of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.

56 The applicant, relying on the judgment in *Jaenicke Cendoya* v *Commission* (paragraph 14), also claims that the recognition of diplomas is a matter solely for the Member States. In that connection, the applicant asserts that the Bologna Declaration forms part of the *acquis communautaire*, despite not being a binding measure, in so far as it encourages the signatory countries to reform their higher-education systems in order to create an overall convergence of diplomas at European level.

57 As a result, where a qualification or diploma is recognised in one Member State, that recognition is binding on the other Member States and consequently on the Commission, which is not entitled to ignore such recognition on pain of infringing the principle of subsidiarity set out in the Bologna Declaration and in the case-law.

58 The applicant submits that, in the present case, by virtue of the Decree of 5 May 2004 and the Decree of 22 October 2004, the 'Laurea in scienze agrarie', obtained in 1985 by the applicant after four years of studies, is equivalent to the 'Laurea magistrale', a diploma obtained after five years of studies, that is, a 'Bachelor's' degree plus a 'Master's' degree.

59 Thus, by failing to accept that the applicant is the holder of two degrees, namely a 'Bachelor's' degree and a 'Master's' degree, the AACC, he argues, infringed the principle of the mutual recognition of diplomas and the principle of subsidiarity.

60 The applicant states that, following the signature of the Bologna Declaration, the signatory States began progressively to reform their respective education systems. In that context, not only are universities issuing certificates of equivalence designed to facilitate the recognition of diplomas, but 'Master's' degrees obtained after completing an undergraduate degree requiring at least three years' of studies are also increasingly being recognised as years of professional experience. Furthermore, the recruitment services of the European institutions regularly recognise postgraduate degrees such as 'Masters' and 'PhDs' as years of professional experience.

61 In the present case, the applicant submits, the 'Laurea in scienze agrarie' was recognised by the University of Florence as being equivalent to a 'Bachelor's' degree plus a 'Masters' degree. Consequently, the applicant claims that the final year of studies carried out in order to obtain his 'Master's' degree ought to have been taken into account by the Commission as a year of professional experience, giving him a total of 20 years and 8 months of professional experience.

62 The applicant also maintains that he obtained from the University of Florence the documents necessary to establish that his diploma is equivalent to a 'Master's' degree. Accordingly, by disputing the certificate of equivalence issued by the University of Florence, the Commission has acted contrary to the principle of freedom of movement for workers and free movement of services, the system of the mutual recognition of diplomas and the objective pursued by universities when they issue certificates of equivalence.

63 As regards the plea alleging infringement of the principle of non-discrimination, the applicant claims that the Commission discriminated against him in relation to those who have obtained recognition, as constituting years of professional experience, of the years of studies completed in order to obtain their 'Master's' degrees. The applicant also claims to have been the victim of discrimination in so far as the Commission and the other institutions failed to adopt a consistent position on that subject.

64 Lastly, as regards the plea alleging a manifest error of assessment, the applicant, relying on the provisions of Article 2(1) and Article 7(3) and (4) of the GIP, submits that his 'Master's' diploma should have been counted as at least one year of professional experience. In deducting one year of professional experience from the applicant's total of 20 years and 8 months of experience, the AACC committed a manifest error of assessment.

65 The Commission contends, first, that, in his complaint, the applicant merely claimed that, following the changes introduced in the Italian legislation in 1999, his diploma was to be regarded as attesting to five years of studies, corresponding to a 'Bachelor's' degree plus a 'Master's' degree. The Commission also concedes that the applicant referred to the principle of equal treatment in his complaint. By contrast, the Commission states that the applicant did not challenge the method used to calculate his professional experience or the rule concerning the deduction of one year of professional experience and that he did not allege any manifest error of assessment in the calculation of his professional experience.

66 Secondly, the Commission contends that Directive 89/48, relied on by the applicant, is not relevant to the present case. The purpose of that directive is to give nationals of the Member States access to a regulated profession in a Member State other than that in which they acquired their professional qualifications.

67 In the present case, the applicant is not requesting access to a regulated profession in a Member State. The subject-matter of the proceedings is classification following the applicant's engagement, not by a Member State or a national of a Member State, but by a Community institution, which is not an addressee of Directive 89/48.

68 Furthermore, it submits, the Court of First Instance has already rejected such arguments based on Directive 89/48 in several other cases (see, inter alia, *Cortes Jimenez and Others* v *Commission* and Case T-25/03 *De Stefano* v *Commission* [2005] ECR-SC I-A-125 and II-573).

69 Thus, in the absence of Community rules on the level of academic qualifications, the only appropriate source is necessarily national law. The Commission, relying on *Jaenicke Cendoya* v *Commission,* submits that when a publication or Community decision includes a mention of academic qualifications, that publication or decision is implicitly making a reference back to national law.

70 In the present case, the Commission argues that it took the relevant national provisions into account. First, it held that the applicant fulfilled the condition set out in Article 2(1)(d) of the GIP. Secondly, when it came to determining the applicant's grade, the Commission calculated the duration of the professional experience in the light of the actual periods of employment indicated on the grading sheet drawn up by the administration and attached as an annex to the defence. In this respect, it had to calculate the experience acquired by the applicant from the date on which he actually obtained the diploma satisfying the minimum conditions for recruitment, in accordance with Article 2 of the GIP. Those minimum qualifications were acquired by the applicant when he obtained the 'Laurea in scienze agrarie' in August 1985. Therefore, no professional experience relating to an earlier date could be taken into account.

71 Lastly, the Commission contends that the only effect of Article 13(7) of the Decree of 22 October 2004 is to allow the applicant to use the title of 'Dottore magistrale' instead of 'Dottore'. The applicant cannot infer from that provision that he now has two diplomas.

72 As regards the plea alleging infringement of the principle of non-discrimination, the Commission points out, first, that it is not an addressee of the Bologna Declaration. That declaration, it submits, does not concern internal decisions by the institutions on the method for calculating professional experience for the purposes of grading an official or member of the temporary or contract staff. The Commission adds that the Bologna Declaration has no binding legal value.

73 Secondly, the Commission argues, the Italian legislation alone must be taken into account. Such interpretation of the equivalence of diplomas as Italian universities might have chosen to adopt is not decisive.

74 Thirdly, the Commission denies the allegation of discrimination. It submits that Article 7 of the GIP was applied to all new members of the contract staff in the same manner.

75 In the applicant's case, his minimum qualifications are those which he acquired after his four years of higher education. He is not in the same position as someone who obtained the 'Laurea' after three years of higher education and the 'Laurea magistrale' after two further years of studies. In this respect, the Commission states that the fact that the applicant may use the title 'Dottore magistrale' in the same way as a person who has obtained the 'Laurea magistrale', separately from the 'Laurea', is not material.

76 The Commission contends that it would be infringing the principle of non-discrimination were it to accept the applicant's submissions, which consist in applying to him a special, more favourable rule, by deeming him to have more professional experience than he actually has.

77 Lastly, the Commission adds that, although the applicant formally holds the title of 'Dottore magistrale', his actual experience is not the same as that of a person who obtained the qualification of 'Dottore magistrale' after 2004. Such a person will have studied for longer and will have obtained two diplomas. The applicant is therefore not in the same position.

Findings of the Tribunal

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

79 Article 2(1)(d) of the GIP, which sets more stringent conditions than those laid down in Article 82(2) of the CEOS, requires, for access to function group IV, not only the completion of a full cycle of university studies of at least three years attested by a diploma, but also the acquisition of 'appropriate professional experience of at least one year'.

80 Under Article 7(1)(d) of the GIP, the classification of members of the contract staff in function group IV takes place at grade 14, if the person concerned has professional experience of more than seven years, or at grade 16 if he has professional experience of more than twenty years. Article 7(3) of the GIP states that the professional experience is taken into account 'from the date on which the person fulfils the minimum qualifications for engagement set out in Article 2 [of the GIP] (including, where applicable, any professional experience required by that Article)'.

81 Pursuant to Article 7(4) of the GIP, in the case of a doctorate the actual duration of the studies relating to it is to be taken into account, subject to an upper limit of three years. In the case of other qualifications, that article provides that the statutory duration of the studies is to be taken into account. It must be noted that the wording of that provision does not specify its purpose. However, taken in the general context of Article 7 of the GIP, paragraph 4 of that article must be understood as referring to the taking into account of qualifications for the purpose of calculating the professional experience of members of the contract staff. The parties are, moreover, in agreement on the meaning to be attributed to Article 7(4) of the GIP, as demonstrated by their answers to a question put by the Tribunal during the hearing.

82 Given that the plea of illegality raised by the applicant, which has been declared inadmissible, is to be disregarded, it must be observed that, pursuant to Article 7(3) of the GIP, the Commission took the applicant's professional experience into account from 10 August 1985 (that is, the day after the date on which he obtained his 'Laurea in scienze agrarie' diploma) until 30 April 2006, amounting to a total of 20 years and 8 months, from which one year was deducted, since the minimum qualifications for access to function group IV, set by Article 2(2)(d) of the GIP, already required one year of professional experience. Thus, pursuant to Article 7(1)(d) and 7(3) of the GIP, the Commission recognised the applicant as having 19 years and 8 months of professional experience, which was insufficient to classify him in grade 16.

83 The applicant nevertheless maintains that his 'Laurea in scienze agrarie', obtained in 1985, is equivalent, since the integration of the recommendations of the Bologna Declaration in Italian law, to a 'Bachelor's' degree plus a 'Master's' degree. Consequently, as he is the holder of a 'Bachelor's' degree and therefore fulfils the minimum conditions in terms of diplomas to be recruited as a member of the contract staff in function group IV, his 'Master's' degree should, under Article 7(4) of the GIP, be regarded as one year of professional experience, enabling him to reach the threshold of 20 years of professional experience required for classification in grade 16.

84 In support of his line of argument, the applicant submits that the equivalence of his 'Laurea in scienze agrarie' should be examined in the light of Directive 89/48, the Italian legislation and the principle of non-discrimination.

85 However, it must first be observed that Directive 89/48 cannot be relied on to support the applicant's claims. The effect of the harmonisation carried out by Directive 89/48 is not to limit the discretion which an institution enjoys when comparing the respective value of diplomas in its recruitment policy. Under the scheme of Directive 89/48, the comparison of diplomas is carried out for

the purpose of access to certain regulated activities in the different Member States. Such an assessment cannot be confused with the complex assessment of the respective academic value of the qualifications obtained in the different Member States for the purpose of determining the grade attached to a post within an institution of the European Communities (see, to that effect, Case T-299/97 *Alonso Morales* v *Commission* [1999] ECR-SC I-A-249 and II-1227, paragraphs 35 and 36, and *De Stefano* v *Commission*, paragraph 53).

86 Secondly, as regards the question whether the Commission correctly took into account the Italian national law relating to the value of the 'Laurea in scienze agrarie' diploma for the purpose of the applicant's classification in grade, it must first be recalled that the Bologna Declaration to which the applicant refers was intended to set a common framework for European diplomas, based on three cycles of studies, attested by, respectively, the 'Bachelor's' degree, 'Master's' degree and 'Doctoral' degree.

87 Next, according to the applicant, the Italian legislation, in particular Article 3(6) and Article 7 of the Decree of 22 October 2004 and the Decree of 5 May 2004, and the documents referred to in paragraph 53 of this judgment concerning his diploma, show that that diploma is equivalent to a 'Laurea' (equivalent to a 'Bachelor's' degree, obtained on completion of three years of studies) plus a 'Laurea Magistrale' (equivalent to a 'Master's' degree, obtained on completion of two years of studies after the award of the 'Laurea').

88 Even on the supposition that the Italian legislation entails equivalence as between the applicant's diploma, obtained after four years of studies, and a 'Master's' degree, obtained after five years of studies, it cannot, however, be inferred, for the purposes of determining the applicant's grade, that the Commission is under an obligation to treat the applicant's diploma as equivalent to two diplomas, namely a 'Bachelor's' degree obtained after three years of studies and, subsequently, a 'Master's' degree, obtained on completion of two further years of studies. Furthermore, the documents issued by the University of Florence, dated

2 and 8 May 2006, on which the applicant relies, do not in any way mention that his 'Laurea in scienze agrarie' diploma is equivalent to obtaining two degrees. As regards the letter signed by Professor Mario Falciai, dated 9 May 2006, which states that the 'Laurea in scienze agrarie' diploma obtained by the applicant is equivalent to a total of five years of studies, corresponding to a 'Bachelor's' degree plus a 'Master's' degree, this does not by itself constitute sufficient proof that, under the Italian legislation, his diploma is equivalent to two degrees.

89 In those circumstances, the applicant cannot successfully argue that the Commission failed to have regard for the Italian legislation by refusing to count the applicant's 'Master's' degree as including one year of professional experience.

90 Since the arguments put forward in support of the plea alleging a manifest error of assessment are closely linked to those relied on in support of the head of claim alleging non-compliance with the Italian legislation, the plea alleging a manifest error of assessment must be rejected on the same grounds, without there being any need to consider its admissibility.

91 Thirdly, as regards the plea alleging infringement of the principle of non-discrimination, suffice it to note, first, that the applicant's position cannot be compared to that of persons who, having completed their studies after the introduction of the new system of degrees, are entitled to have their 'Master's' degree counted as one year of professional experience.

92 The applicant is not in a position where, after having obtained a first diploma satisfying the conditions set out in Article 2(1)(d) of the GIP, he continued his studies in order to obtain a higher level diploma, in which case the issue would arise as to whether the studies completed in order to obtain that second diploma are to be taken into account as professional experience, pursuant to Article 7(4) of the GIP.

93 Next, concerning the head of claim that the applicant was the victim of discrimination by reason of the inconsistency between the positions adopted, first, by the Commission, which is the institution to which he is attached, and, secondly, by the other institutions, suffice it to point out that the applicant has not produced any hard factual or legal evidence to substantiate that claim, even if such evidence were capable of placing in issue the legality of the contested decision.

94 It follows from all the foregoing that the pleas alleging infringement of the Community rules on the recognition of higher-education diplomas, infringement of the principle of non-discrimination and manifest error of assessment must be rejected as unfounded.

The plea alleging a failure to state reasons

Arguments of the parties

95 The applicant claims that there was a 'clear lack of motivation' in the decision to reject his complaint. He submits that the AACC limited itself to referring to Article 7(3) and Article 2(1) of the GIP in order to justify the deduction of one year of professional experience. In addition, it did not give any explanation whatsoever for the refusal to regard his 'Master's' degree as a year of professional experience.

96 The Commission contends, first, that that plea is inadmissible on the ground that it was not put forward in the complaint.

97 Secondly, and in the alternative, the Commission contends that the AACC explained why the 'Master's' degree was not taken into account as a year of professional experience. In the decision rejecting the complaint, the AACC made it quite clear that it did not accept that the applicant should be regarded as holding two separate degrees. It stated that there was no legal basis for splitting his one single 'Laurea in scienze agrarie' diploma in two.

98 Thirdly, the Commission states that it could determine the length of professional experience only on the basis of the documents provided by the individual concerned, which it did.

Findings of the Tribunal

99 The obligation to state reasons for a decision adversely affecting an official laid down in the second paragraph of Article 25 of the Staff Regulations and, in the case of decisions taken following a complaint, by the second subparagraph of Article 90(2) of the Staff Regulations, is intended, first, to provide the individual concerned with sufficient details to allow him to ascertain whether the decision is well founded and an opportunity to bring judicial proceedings challenging its legality and, secondly, to enable the Community Courts to exercise their power of review (Case 195/80 *Michel* v *Parliament* [1981] ECR 2861, paragraph 22; Case T-1/90 *Pérez-Mínguez Casariego* v *Commission* [1991] ECR II-143, paragraph 73; Case T-117/01 *Roman Parra* v *Commission* [2002] ECR-SC I-A-27 and II-121, paragraph 24; and Case T-263/01 *Mavromichalis* v *Commission* [2002] ECR-SC I-A-135 and II-731, paragraph 18).

100 Although, admittedly, the appointing authority is not, in general, required to reply to a complaint, the position is different where the decision which is the subject of it is not reasoned (Case C-115/92 P *Parliament* v *Volger* [1993] ECR I-6549, paragraph 23). The reasons for the decision should be stated, at the latest, when the complaint is rejected (Case T-25/92 *Vela Palacios* v *ESC* [1993] ECR II-201, paragraph 25).

101 The applicant claims in his application that there was a 'clear lack of motivation' for the decision to reject his complaint, inasmuch as the AACC refers to Article 7(3) and Article 2(1)(c) of the GIP to justify the rule of the deduction of one year of professional experience, without giving any explanation for the refusal to consider his 'Master's' degree as such a year of professional experience.

102 It is common ground that the contested decision does not give reasons for the applicant's classification. Article 3 of the applicant's contract of engagement as a member of the contract staff merely states that the 'member of the contract staff is classified in function group IV, grade 14, step 1'.

103 By contrast, the decision rejecting the complaint shows clearly that the deduction of one year of professional experience results from the combined application of Article 2(1) and Article 7(3) of the GIP. As regards the head of claim alleging that the AACC did not explain to the applicant why it was unable to count his 'Master's' degree as a year of professional experience, the decision rejecting the complaint shows that, in the absence of a legal basis on which to do so, the Commission was unable to find that the 'Laurea in scienze agrarie' diploma corresponded to two degrees and, consequently, the 'Master's' degree could not be taken into account in the calculation of the applicant's professional experience. Accordingly, the applicant cannot claim that there was a 'clear lack of motivation' for the decision rejecting the complaint.

104 It should, moreover, be pointed out that the applicant was in a position, after the decision rejecting his complaint, to understand the full significance of the contested decision. Indeed, he himself in his application provides an explanation of the combined application of Articles 2 and 7 of the GIP, on the basis of which the contested decision was taken. In addition, the applicant must be deemed to have been made aware of the reasons which led the Commission not to take his 'Master's' degree into account as one year of professional experience, since the debate between the parties in their respective written pleadings concerns specifically that issue.

105 As a result, the plea alleging a failure to state reasons must be rejected as unfounded, without there being any need to examine it as to admissibility.

106 It follows from all of the foregoing that the action must be dismissed in its entirety.

Costs

107 Under Article 122 of the Rules of Procedure, the provisions of Title 2, Chapter 8, 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, that is, from 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.

108 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. However, under Article 88 of those Rules, in proceedings between the Communities and their servants the institutions are to bear their own costs. Since the applicant has been unsuccessful, each party must be ordered to bear its own costs.

On those grounds,

THE TRIBUNAL (Second Chamber)

hereby:

1. Dismisses the action;

2. Orders each party to bear its own costs.

Van Raepenbusch Boruta Kanninen

Delivered in open court in Luxembourg on 11 December 2008.

W. Hakenberg
Registrar

H. Kanninen
President