

Case T-56/89

Brigitte Bataille and Others

v

European Parliament

(Officials — Separate steps in the pre-litigation procedure — Exclusion of temporary staff from an internal competition)

Judgment of the Court of First Instance (Fifth Chamber), 8 November 1990 598

Summary of the Judgment

1. *Officials — Recruitment — Competitions — Internal competitions — Right of temporary staff to take part*
(Staff Regulations, Art. 29(1)(b))
 2. *Officials — Actions — Objection of illegality — Measures which may be objected to as illegal — Internal guidelines of an institution*
(Staff Regulations, Article 91)
 3. *Officials — Rights and obligations — Restrictions imposed by an institution on the exercise of rights granted by the Staff Regulations — Not permissible — Possibility of individual derogations — No effect*
 4. *Officials — Recruitment — Competitions — Internal competitions — Exclusion of temporary staff recruited otherwise than from reserve lists drawn up following open competitions — Not permissible — Equal treatment — Infringement*
(Staff Regulations, Art. 27, first paragraph, and Article 29(1); Annex III, Art. 1(1)(d)).
1. No provision of the Staff Regulations or the annexes thereto excludes temporary staff from taking part in internal competitions. Temporary staff are in principle entitled to take part in competitions internal to their institutions. That right under the Staff Regulations does not constitute an unlawful privilege for temporary staff which would lead to discrimination against people not employed by the institutions.
2. Applicants are entitled to contest individual decisions rejecting their

applications on the ground of the illegality, having regard to mandatory provisions of the Staff Regulations, of the internal guidelines of the institution on which those decisions are based.

3. A rule of conduct adopted by an institution which, in breach of the Staff Regulations, restricts the exercise of a right conferred on its employees by the Staff Regulations cannot be regarded as being in conformity with the Staff Regulations merely because the appointing authority reserves the right to adopt discretionary decisions in particular cases. Such a possibility is not sufficient to guarantee full exercise of the right in question, since it is subject to a discretionary assessment by the appointing authority for which there is no provision in the Staff Regulations.
4. An institution which does not allow temporary staff recruited otherwise than from reserve lists drawn up following open competitions to enter internal competitions is thereby adopting as a preliminary criterion for admission to the

competition the purely circumstantial requirement that the temporary staff should have been recruited on the basis of such a list, even though there is no necessary link between that requirement and the possession of certain diplomas or evidence of formal qualifications.

Such a criterion, based on a circumstantial aspect of the procedure whereby temporary staff were recruited, is not in conformity with the objective of internal competitions since, in principle, the Staff Regulations make it possible to establish temporary staff of an institution by means of an internal competition. That criterion is also manifestly contrary to the objective of the recruitment procedures laid down by the mandatory provisions of the first paragraph of Article 27 and Article 29(1) of the Staff Regulations, which is to ensure the recruitment of officials of the highest standards of ability. Finally, it leads to an unjustifiable difference of treatment between temporary staff recruited 'otherwise than' from a reserve list and the remaining temporary staff.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

8 November 1990 *

In Case T-56/89,

Brigitte Bataille, Rosalia Bellomo-Gullo, Eirwen Butland-Deboeck, Elisabeth Couzon, Elke Eggerder, Nadine Germeaux-Timmermans, Ursula Gresch-Bothe, Wiebke Käsela, Enrica Malcotti-Tucci, Isabelle Mertz, Mireille Meskens,

* Language of the case: French.