

purposes of promotion, the period during which an official was employed by his institution as a member of the temporary staff would be taken into consideration cannot give rise to legitimate expectations on the part of the official.

3. An official cannot rely on the principle of equality of treatment to claim the benefit of a practice contrary to the provisions of the Staff Regulations since no person may plead in his own cause an unlawful act committed in favour of another.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)

14 May 1991 *

In Case T-30/90,

Wolfdietrich Zoder, an official of the European Parliament, residing in Senningerberg (Grand-Duchy of Luxembourg), represented by Aloyse May, assisted by Carole Kerschen, of the Luxembourg Bar, with an address for service in Luxembourg at their Chambers, 31 Grand Rue,

applicant,

v

European Parliament, represented by Jorge Campinos, jurisconsult, assisted by Manfred Peter and Jannis Pantalis, members of its Legal Service, acting as Agents, with an address for service in Luxembourg at the General Secretariat of the European Parliament, Kirchberg,

defendant,

APPLICATION for the annulment of the decision of the European Parliament of 8 September 1989 not to include the applicant on the list of candidates promoted, with effect from 1 April 1988, to Grade LA 6 in the career bracket of translator,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Fourth Chamber),

composed of: R. Schintgen, President of the Chamber, D. A. O. Edward and R. García-Valdecasas, Judges,

Registrar: H. Jung,

having regard to the written procedure and further to the hearing on 27 February 1991,

gives the following

Judgment

Facts

- The applicant, Wolfdietrich Zoder, passed a competition organized by the European Parliament (hereinafter referred to as 'the Parliament') in October and November 1985 for the recruitment of translators into Spanish, and his name was placed on the reserve list drawn up following the competition. Notwithstanding his inclusion on that list the applicant was engaged by the Parliament on 6 January 1986, not as an official, but as a member of the temporary staff. He was appointed a probationary official in Grade LA 7 with effect from 1 April 1986 and was established in that grade with effect from 1 January 1987.
- In February 1989 the applicant's name was included on the list of officials eligible for promotion from Grade LA 7 to Grade LA 6 in 1988. His name was not however included on the list, drawn up by decision of the Secretary-General of the Parliament on 8 September 1989, of officials promoted to Grade LA 6 with effect from 1 April 1988.
- By a memorandum dated 7 December 1989 the applicant lodged a complaint under Article 90(2) of the Staff Regulations of Officials of the European

Communities against the decision of 8 September 1989. He complained that the administration had not taken into account the whole period during which he had worked for the Parliament. He stated that he had been employed from 6 January 1986 as a member of the temporary staff owing to a lack of posts in the Spanish Division, before being appointed a probationary official from 1 April 1986. He complained that younger colleagues with an equivalent staff report had been promoted to Grade LA 6 although they had been employed after him. Such discrimination was said to be contrary to the statement made by the Director-General for Personnel, Mr Van den Berghe, at a meeting to welcome new officials and other staff in 1986, according to which seniority for the purposes of subsequent promotion would be calculated, for any person whose name had been included on a reserve list, from the date of his recruitment as an official or employment as a member of the temporary staff. The applicant also referred to a decision taken by the Advisory Committee on Promotions at its meeting on 19 December 1988, according to which not only should account be taken of the special position of the newly created divisions but also it was necessary to honour, in addition to the assurances given by the Director-General for Personnel, those which the authorities of the Parliament had given persons whose names had not been included on any reserve list at the beginning of 1986. In his case that decision had not been correctly applied and the members of the Staff Committee who were members of the Advisory Committee on Promotions had pointed out that error to the secretary of the committee, Mr Baldanza, in a letter dated July 1989.

- 4 Mr Zoder's complaint was the subject of a favourable opinion from the Director of Translation dated 13 December 1989 and from the Director-General for Translation and General Services dated 14 December 1989.

- 5 It was not until 3 July 1990 that the appointing authority issued a memorandum in reply to that complaint, following administrative delays which the defendant itself described as exceptional. As regards the alleged discrimination consisting in the fact that, for certain of his colleagues whose names had also been included on a reserve list, the seniority required for the purposes of promotion had been calculated from the date of their recruitment as officials or their employment as members of the temporary staff, the Secretary-General, Mr Enrico Vinci, stated:

'I would inform you that the measure mentioned in your complaint was adopted, after exceptional authorization by the President of the Parliament, in respect of your colleagues who are Spanish and Portuguese principal translators/revisers and who were appointed following internal competitions LA 101 and LA 102. Your case is of course different; you were appointed as a result of another competition, PE/94/LA, and your appointment is effective from 1 April 1986.

The said measure does not discriminate against you since it was adopted to remedy the disadvantage suffered by colleagues who were selected before you in June 1985 but were not appointed until 1 June 1986 as a result of the delay in the organization of their internal competitions. In that sense your position cannot be regarded as identical, which is a condition for the application of the measure being extended to your case.

As for colleagues with equivalent merits promoted to LA 6 by decision of 8 September 1989, their seniority in grade and category is greater since they were appointed officials before your appointment.'

- Mr Zoder was promoted to Grade LA 6 with effect from 1 January 1989.

Procedure

- ✓ By application lodged at the Registry of the Court of First Instance on 4 July 1990 the applicant, without receiving notice of the express rejection of his complaint, brought the present action for annulment of the aforementioned decision of 8 September 1989.
- ✓ The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur the Court of First Instance decided to open the oral procedure without any preparatory inquiries.

9 The hearing took place on 27 February 1991. The representatives of the parties presented oral argument and replied to questions put by the Court.

10 The applicant claims that the Court should:

(1) declare the action to be admissible;

(2) declare it to be well founded;

(3) set aside and declare null and void the decision rejecting his complaint;

(4) annul the decision taken by the appointing authority of the Parliament on 8 September 1989 which failed to include the applicant on the list of candidates in the translation service who were promoted from Grade LA 7 to LA 6 with effect from 1 April 1988;

(5) annul the promotions which have been made in the meantime, in so far as necessary;

(6) order the defendant to pay the costs.

11 The defendant contends that the Court should:

(1) declare the application to be inadmissible;

(2) if necessary, dismiss it as unfounded;

(3) make an order for costs in accordance with the applicable provisions.

Admissibility

- 12 The defendant contends that the action is inadmissible on the ground that the applicant was not eligible for promotion in 1988. It concludes that the application is not directed against a measure adversely affecting the applicant and that he has no vested and present interest in bringing proceedings.
- 13 In support of that plea it contends that, according to the case-law of the Court of Justice (see the judgment in Joined Cases 20/83 and 21/83 *Vlachos v Court of Justice* [1984] ECR 4149 and the order in Case 248/86 *Brüggemann v Economic and Social Committee* [1987] ECR 3963), the minimum period of two years' seniority in grade required for promotion under Article 45 of the Staff Regulations did not begin to run until he was established on 1 January 1987. Mr Zoder's name ought not therefore to have been included on the list of officials eligible for promotion in 1988.
- 14 According to the defendant, that list did not in any event have any impact on the contested decision such as to affect directly and immediately the applicant's interests under the Staff Regulations. Of the candidates actually promoted only one was appointed and established at the same time as the applicant. That candidate had obtained a higher total of marks than Mr Zoder (56.50 compared with 55.50). The other candidates promoted were appointed and established before Mr Zoder. Accordingly, neither the decision of 8 September 1989 nor its annulment would affect the applicant's position.
- 15 The applicant, on the other hand, maintains that he was eligible for promotion in 1988. The decision of 8 September 1989 contained a mistake detrimental to him in the calculation of his seniority and therefore constitutes an act adversely affecting him so that he has an interest in bring proceedings. He argues that he was recruited on 6 January 1986 and that his seniority should be calculated from that date.
- 16 He adds that of the 25 persons promoted to Grade LA 6 with effect from 1988 at least 21 were in the same position as him, that is to say that when their names

were included on the list of officials eligible for promotion for 1988 the date of their appointment as a probationary official and not their establishment was taken as the starting point for calculating their seniority. Furthermore, the list contained the names of several candidates who were promoted under the promotion procedure for 1988 only two years after their appointment as probationary officials and not two years after their establishment, in spite of the fact that they were appointed and established after the applicant.

- 17 In reply to that last argument the defendant states that the cases to which the applicant refers are of no relevance to the decision of 8 September 1989.
- 18 Before the Court considers the plea of inadmissibility raised by the defendant, it should point out that at the hearing the two parties agreed that the essential issue in the case is the date from which Mr Zoder's seniority should be calculated having regard to the rules on promotion: the latter claims that his period of employment as a member of the temporary staff should be taken into account whereas the defendant takes the contrary view.
- 19 In that connection Article 45(1) of the Staff Regulations provides as follows:

'Promotion shall be by decision of the appointing authority. It shall be effected by appointment of the official to the next higher grade in the category or service to which he belongs. Promotion shall be exclusively by selection from among officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the reports on them.'

For officials appointed to the starting grade in their service or category, this period shall be six months from the date of their establishment; for other officials it shall be two years.'

- 20 The Court considers that it follows from the wording of that provision that in the present case the minimum period which the applicant, who had not been appointed to the starting grade in his service but to Grade LA 7, had to complete before being eligible for promotion was two years from his establishment, namely 1 January 1987.
- 21 That interpretation is confirmed by the case-law of the Court of Justice, according to which an official, in order to be eligible for promotion, must have completed a minimum period in his grade which, depending on the case, is six months or two years from his establishment (see the aforementioned judgment in *Vlachos v Court of Justice*, paragraph 18, and the order in *Brüggemann v Economic and Social Committee*, paragraphs 7 and 8).
- 22 Furthermore, it is apparent from the case-law of the Court of Justice in relation to Article 44 of the Staff Regulations, which concerns the automatic advancement in step of an official, that no provision of the Staff Regulations allows account to be taken of a period during which an official previously served his institution as a member of its temporary staff, and that is so notwithstanding the special circumstance that when he was recruited as a member of the temporary staff he had passed a competition for admission and was therefore eligible to be appointed an official (see the judgments in Case 146/84 *De Santis v Court of Auditors* [1985] ECR 1731 and Case 37/87 *Sperber v Court of Justice* [1988] ECR 1943). That reasoning, which the Court of Justice adopted in relation to Article 44, which does not expressly stipulate the date from which the person's seniority should be calculated, may be applied *a fortiori* to Article 45, which does expressly so provide.
- 23 It follows from the above that the date to be taken into account in calculating Mr Zoder's seniority in grade is 1 January 1987, the date of his establishment. He thus completed the minimum period in his grade qualifying him for promotion on 1 January 1989, the date when he was in fact promoted.
- 24 It follows that since the applicant had not completed the minimum period in his grade he was not eligible for promotion in 1988. The decision of 8 September

1989 promoting a number of officials with effect from 1 April 1988 could not therefore constitute an act adversely affecting him, and he therefore has no interest in seeking its annulment.

- 25 For the sake of completeness, the Court points out that, as regards the assurances alleged to have been given in 1986 by the Director-General for Personnel to new officials and members of the temporary staff to the effect that, for purposes of subsequent promotion, the date of their recruitment or appointment would be taken into account, such assurances, even assuming that they are proven, could not give rise to legitimate expectations on the part of those concerned since they were given without regard to the provisions of the Staff Regulations (see the judgment in Case 162/84 *Vlachou v Court of Auditors* [1986] ECR 481, paragraph 6 and the judgment in Case T-123/89 *Chomel v Commission* [1990] ECR II-131, paragraph 30).
- 26 Finally, even if the defendant institution in fact promoted officials who had only completed a period of two years from their appointment as probationary officials and not from their establishment, the applicant would not be able to rely on such a practice contrary to the provisions of the Staff Regulations, since no person may plead in his own cause an unlawful act committed in favour of another (judgments in Case 188/83 *Witte v Parliament* [1984] ECR 3465, paragraph 15 and Case 134/84 *Williams v Court of Auditors* [1985] ECR 2225, paragraph 14).
- 27 It follows from all the above considerations that the application must be dismissed as inadmissible.

Costs

- 28 Under Article 69(2) of the Rules of Procedure of the Court of Justice, which apply *mutatis mutandis* to the procedure before the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the

successful party's pleading. However, Article 70 provides that in proceedings between institutions and the staff of the Communities institutions are to bear their own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

- (1) Dismisses the action as inadmissible;**
- (2) Orders the parties to bear their own costs.**

Schintgen

Edward

García-Valdecasas

Delivered in open Court in Luxembourg on 14 May 1991.

H. Jung

Registrar

R. Schintgen

President of the Fourth Chamber