

It follows that the engagement and appointment by the Commission of a member of the overseas staff of the Association constitutes recruitment from outside the institutions and that the Commission cannot, therefore, be under

any obligation to verify and, if necessary, modify that person's classification with the Association on the basis of which he or she was classified on recruitment as an official of the European Communities.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
27 March 1990 *

In Case T-62/89

José Manuel Pinto Teixeira, an official of the Commission of the European Communities, residing at Mbabane, Swaziland, represented by Edmond Lebrun, of the Brussels Bar, with an address for service in Luxembourg at the chambers of Tony Bieber, 83, boulevard Grande-Duchesse-Charlotte,

applicant,

v

Commission of the European Communities, represented by Sean van Raepenbusch, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the annulment of the decisions of the Commission appointing the applicant as a probationary and subsequently as an established official, in so far as they determine his grade and step, and for recognition of his classification in Grade A 6, Step 2,

* Language of the case: French.

THE COURT OF FIRST INSTANCE (Fourth Chamber)

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

Registrar: B. Pastor, Administrator

having regard to the written procedure and further to the hearing on 7 March 1990,

gives the following

Judgment

The factual background to the application

Under a contract of employment of 11 December 1987, the applicant, José Manuel Pinto Teixeira, a Portuguese national, was recruited with effect from 1 February 1988 as a member of the staff of the European Association for Cooperation (hereinafter referred to as 'the Association'), which is an international non-profit-making association governed by Belgian law, given corporate status by a Royal Decree of 15 September 1964 (*Moniteur belge*, 3.10.1964, p. 10536). He was placed at the disposal of the European Communities in order to serve as an adviser on civil engineering projects in a Commission delegation in ACP, MSE or ALA countries.

In fact, that contract was never implemented. By a letter of 7 January 1988 from the Head of the Personnel Division of the Commission, the applicant was offered employment as an official of the Commission. Mr Pinto Teixeira accepted that offer by a telex message sent on 13 January 1988. By a decision of 10 May 1988, he was appointed as a probationary official of the Commission with effect from 1 February 1988, as an administrator, classified in Grade A 7, Step 1.

That appointment was made pursuant to Council Regulation (Euratom, ECSC, EEC) No 3018/87 of 5 October 1987 introducing special transitional measures for the recruitment of overseas staff of the European Association for Cooperation as officials of the European Communities (hereinafter referred to as 'Regulation No 3018/87').

- 2 By a letter dated 28 April 1988, registered on 16 May 1988, the applicant submitted a complaint within the meaning of Article 90(2) of the Staff Regulations against the decision of 10 May 1988 classifying him; he considered himself to be entitled to classification in Grade A 6, Step 2, with 12 months' additional seniority.
- 3 That complaint was rejected by a decision of the Commission of 26 September 1988, of which the applicant was notified by a letter of 13 October 1988.
- 4 The applicant was established in his post by a decision of the Commission of 20 January 1989 which entered into effect on 1 November 1988.

Procedure

- 5 Those were the circumstances in which, by an application lodged at the Registry of the Court of Justice on 30 January 1989, José Manuel Pinto Teixeira brought the present action against the Commission.
- 6 The applicant claimed that the Court should:
 - (1) declare the application admissible and well founded;
 - (2) consequently:
 - (a) annul the decisions of the defendant appointing him as a probationary official and subsequently as an established official, in so far as they determine his grade and step;
 - (b) declare that the applicant must be classified, in those appointments, in Grade A 6, Step 2, with additional seniority in that step of 12 months;
 - (c) annul the decision rejecting the complaint registered on 16 May 1988;

(3) order the defendant to pay the costs.

7 The defendant contended that the Court should:

(1) dismiss the application as unfounded;

(2) make an appropriate order as to costs.

8 The written procedure took place entirely before the Court of Justice, which, by order of 15 November 1989, referred the case to the Court of First Instance pursuant to Article 3(1) of the Council Decision of 24 October 1988 establishing a Court of First Instance of the European Communities.

9 Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory inquiry. It nevertheless requested the Secretary-General of the Council of the European Communities to make available any entry in the Minutes concerning the second recital in the preamble to Council Regulation No 3018/87 of 5 October 1987. In response to that request, the Council sent the Court, by a letter lodged at the Registry on 5 March 1990, the text of a declaration of the Commission entered in the Minutes of the meeting of the Council, in which it undertook to 'make every effort' to recruit staff among the nationals of the new Member States, 'in order to achieve a desirable geographical balance while taking into account the interests of the service'.

10 The hearing took place on 7 March 1990. The representatives of the parties submitted oral argument and replied to the questions put by the Court.

Substance

11 The applicant's primary submission in support of his application comprises two limbs: first, he alleges an infringement of the Commission's decision of 13 December 1985 introducing special and temporary measures on the criteria applicable to grade and step upon the recruitment of Spanish and Portuguese

nationals as a result of the accession of Spain and Portugal; secondly, he alleges a breach of the principle of equal treatment as a result of differences in the treatment of Spanish and Portuguese nationals.

- 12 The applicant also puts forward an alternative submission, the first limb of which alleges a breach of the principle of equal treatment as laid down in Article 5(3) of the Staff Regulations, and the second limb of which alleges that his classification is not consistent with the relevant criteria.

The primary submission

- 13 The applicant complains that the Commission decided to classify him in Grade A 7, Step 1, on the basis of Regulation No 3018/87.

- 14 He seeks the annulment of that decision and classification in Grade A 6, Step 2, on the basis of the Commission's decision of 13 December 1985, cited above, adopted pursuant to Council Regulation (ECSC, EEC, Euratom) No 3517/85 of 12 December 1985 introducing special and temporary measures applicable to the recruitment of officials of the European Communities as a result of the accession of Spain and Portugal (hereinafter referred to as 'Regulation No 3517/85').

- 15 The applicant points out that the second recital in the preamble to Regulation No 3018/87 stresses that 'the entry into force of this regulation does not affect the special temporary measures adopted by Regulation (ECSC, EEC, Euratom) No 3517/85 for the recruitment of Spanish and Portuguese nationals as officials of the European Communities'.

- 16 The defendant maintains that the applicant may not claim the right to combine the benefits of recruitment on the basis of Regulation No 3018/87 with the benefit of the special measures applicable to the classification of Spanish and Portuguese nationals recruited on the basis of Regulation No 3517/85.

17 It should be noted that it is the intention of Regulation No 3018/87, by stressing that its entry into force does not affect the special and temporary measures laid down by Regulation No 3517/85, to emphasize the separate nature of, on the one hand, the special transitional measures introduced for the recruitment of overseas staff of the Association and, on the other hand, the special and temporary measures for recruitment introduced upon the accession of Spain and Portugal.

18 It is clear that the special and temporary measures for recruitment laid down in each of those two regulations were adopted for two specific purposes and thus constitute two independent sets of rules.

19 It follows that an official recruited on the basis of the special and temporary measures for recruitment laid down by either of those regulations may not claim the benefit, in whole or in part, of the special and temporary measures for recruitment laid down by the other regulation; the essential difference between the recruitment measures with which the two regulations are concerned lies in the fact that an appointment made on the basis of Regulation No 3517/85 is decided upon following a competition, while an appointment on the basis of Regulation No 3018/87 is made following the opinion of an *ad hoc* committee.

20 The documents submitted to the Court establish that the applicant was fully aware, when he accepted his appointment on 13 January 1988, that he would be recruited on the basis of Regulation No 3018/87 and that he did not claim, before he finally took up his duties, the benefit of the recruitment measures with which Regulation No 3517/85 is concerned.

21 The first limb of the main submission must therefore be dismissed.

22 The second limb of that submission, alleging a breach of the principle of equal treatment as a result of differences in the treatment of Spanish and Portuguese nationals depending on whether they are recruited on the basis of Regulation No 3517/85 or of Regulation No 3018/87, cannot be accepted either.

23 The special features inherent in each of the two sets of recruitment arrangements are justified by the objective difference between, on the one hand, the situation of an official recruited in the context of a scheme to establish former members of the staff of the Association, which is applicable to any official who is a national of one of the Member States, and, on the other hand, that of a Spanish or Portuguese official recruited under the derogating measures introduced as a result of the accession of Spain and Portugal to the European Communities.

24 It follows from the foregoing that the main submission must be dismissed.

The alternative submission

25 In support of the first limb of this submission, which alleges an infringement of Article 5(3) of the Staff Regulations, the applicant claims that his classification is discriminatory in relation to that of his colleagues also appointed as officials under Regulation No 3018/87 who were classified in Grade A 7. The second limb of his alternative argument is that his classification is inconsistent with the relevant criteria, which are his age (35 years), the length of his professional experience (11 years) and his university education (5 years, plus one year of postgraduate study). Finally, he complains that the Commission merely confirmed his basic salary at the Association, without verifying whether that salary was not incorrect as a result of any factual or legal error.

26 In refutation of those arguments, the defendant relies on a comparative table showing details of the staff established at the beginning of 1988 on the basis of Regulation No 3018/87. It adds that the engagement of overseas staff of the Association by the Commission constitutes recruitment from outside the institutions and is thus based on special derogating provisions which preclude the application of any other provision.

27 As regards the first limb of this submission, the Court, when considering whether there has been any discrimination against the applicant, can take into consideration only a situation comparable to that of the applicant, namely, in this case, the classification of the other members of staff established at the same time as he on the basis of Regulation No 3018/87.

- 28 The information provided by the comparative table produced by the defendant is sufficient to enable the Court to conclude that the applicant was not treated less favourably than his colleagues at work.
- 29 With regard to the second limb of the alternative submission, it must be noted that Article 3 of Regulation No 3018/87 provides that officials appointed under that regulation are to be appointed to the category, grade and step whose basic salary corresponds to the salary received from the Association. By virtue of that criterion, the applicant, who was classified at the Association in Grade III, Step 3, was properly classified in Grade A 7, Step 1, at the Commission.
- 30 It was pointed out above, in the examination of the main submission that only Regulation No 3018/87 applies to the applicant. There is therefore no other criterion of classification which could have been infringed by the decision classifying the applicant.
- 31 Finally, with regard to the claim that the Commission was under an obligation to verify the applicant's classification with the Association, it must be pointed out that the Court of Justice has held in a number of cases (see the judgments of 11 July 1985 in Case 119/83 *Appelbaum v Commission* [1985] ECR 2447, of 11 July 1985 in Joined Cases 87/77 and 130/77, 22/83, 9/84 and 10/84 *Salerno and Others v Commission and Council* [1985] 2523, of 5 October 1988 in Joined Cases 314/86 and 315/86 *De Szy-Tarisse and Feyaerts v Commission* [1988] ECR 6013, of 13 July 1989 in Case 286/83 *Alexis and Others v Commission* [1989] ECR 2445, and of 13 July 1989 in Case 161/86 *Jaeger v Commission* [1989] ECR 2467) that the European Association for Cooperation is an association governed by Belgian law and cannot, therefore, be regarded as an administrative unit of the Commission.
- 32 It follows that the engagement and appointment of the applicant constituted recruitment from outside the institutions and that the Commission cannot, therefore, have been under any obligation to verify and, if necessary, modify the applicant's classification with the Association.
- 33 It follows from the foregoing considerations that the alternative submission is also unfounded.

34 The application must therefore be dismissed.

Costs

35 Under Article 69(2) of the Rules of Procedure of the Court of Justice, applicable *mutatis mutandis* to the Court of First Instance under Article 11 of the Council Decision of 24 October 1988, cited above, the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. However, Article 70 of those Rules provides that institutions are to bear their own costs in proceedings brought by servants of the Communities.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby:

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

Edward

Schintgen

García-Valdecasas

Delivered in open court in Luxembourg on 27 March 1990.

H. Jung
Registrar

D. A. O. Edward
President