

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)
17 October 2002

Joined Cases T-330/00 and T-114/01

Stefano Cocchi and Evi Hainz

v

Commission of the European Communities

(Officials – Recruitment procedure – Article 29(1) of the Staff Regulations – Priority for officials – Rejection of candidatures from members of the temporary staff – Appointment of an official – Principle of non-discrimination – Statement of grounds – Interests of the service – Article 8, fourth and fifth paragraphs, of the Conditions of Employment of Other Servants – Duty to have regard for the interests of officials – Vacancy notice)

Full text in French II - 987

Application for: – in Case T-330/00, first, annulment of the appointing authority's decisions to conclude the contracts of 16 March 2000 and of 22 February 2000 to reject the candidatures of Mr Cocchi and Ms Hainz for the posts declared vacant by vacancy notices COM/R/5530/00 and COM/R/5500/00 respectively or, in the alternative, annulment of those vacancy notices, and, second, compensation for the harm allegedly suffered by the applicants;

- in Case T-114/01, first, annulment of the appointment decisions taken by the authority empowered to conclude contracts in connection with the recruitment procedures initiated by vacancy notices COM/R/5530/00 and COM/R/5500/00 and, second, compensation for the harm allegedly suffered by the applicants.

Held: The applications are dismissed. The parties are ordered to bear their own costs.

Summary

*1. Officials – Recruitment – Vacant post – Post which may be filled by either an official or a member of the temporary staff – Priority for the official – Appointment of an official who satisfies the requirements in the vacancy notice – Principle of non-discrimination – Breach – None
(Staff Regulations, Art. 29(1))*

*2. Officials – Decision adversely affecting an official – Rejection of a candidature – Obligation to state grounds at the latest at the stage of rejection of the complaint
(Staff Regulations, Art. 25, second para.)*

*3. Officials – Organisation of the service – Assignment of staff – Discretion of the appointing authority – Interests of the service – Review by the Court – Limits
(Staff Regulations, Art. 7)*

4. Officials – Temporary staff – Recruitment – Limitation of the period of the contract below the maximum permitted and exclusion of renewal – Lawfulness (Conditions of Employment of Other Servants, Art. 8)

5. Officials – Administration's duty to have regard for the interests of officials – Scope

1. Where a post covered by a vacancy notice may be filled by the appointment of an official or by the engagement of a member of the temporary staff falling within the scope of Article 2(d) of the Conditions of Employment of Other Servants, the Commission may legitimately, pursuant to Article 29(1) of the Staff Regulations, give priority consideration to applications for promotion or transfer submitted by officials of the institution and decide to appoint one of them after verifying that he or she satisfied the requirements set out in the vacancy notice in question, without being obliged to consider the candidatures of members of the temporary staff at the same time as those of those officials or, *a fortiori*, to engage one of the members of the temporary staff if he or she also satisfies the requirements set out in the vacancy notice.

First, the fact that, notwithstanding the priority falling to officials under Article 29 of the Staff Regulations, the appointing authority is not obliged to appoint an official following consideration of the candidatures for promotion or transfer does not mean that it is necessarily obliged, in any event, to extend its consideration to other types of candidatures and to appoint a candidate other than a qualified official who satisfies the requirements set out in the vacancy notice. In that regard, it is not under an obligation, but merely has an option, the exercise of which falls within the scope of its wide discretion. Secondly, the act of applying a distinction as between the candidatures of officials and those of members of the temporary staff cannot constitute discrimination. Since priority falls to officials, there is a fundamental

difference between those two types of candidatures and they cannot therefore be treated in an identical manner.

(see paras 33, 40, 45, 52)

See: T-100/92 *La Pietra v Commission* [1994] ECR-SC I-A-83 and II-275, para. 50;
T-372/00 *Campolargo v Commission* [2002] ECR-SC I-A-49 and II-223, para. 90

2. The requirement that a decision adversely affecting a person should state the grounds on which it is based is intended, firstly, to provide the person concerned with details sufficient to allow him to ascertain whether the decision is well founded and, secondly, to enable the Court to review its legality. Where a decision rejects a candidature for a post declared vacant, the appointing authority is required to provide a statement of the grounds, at least at the stage of rejection of the complaint against such a decision.

(see para. 55)

See: 195/80 *Michel v Parliament* [1981] ECR 2861, para. 22; 69/83 *Lux v Court of Auditors* [1984] ECR 2447, para. 36; T-1/90 *Pérez-Mínguez Casariego v Commission* [1991] ECR II-143, para. 73; T-52/90 *Volger v Parliament* [1992] ECR II-121, para. 36; T-25/92 *Vela Palacios v ESC* [1993] ECR II-201, para. 22; T-13/95 *Kyrpitsis v ESC* [1996] ECR-SC I-A-167 and II-503, paras 67 and 68

3. Under Article 7 of the Staff Regulations, the appointing authority must choose the official to be assigned to a vacant post, following a vacancy notice, solely in the interests of the service. In making such a decision, the appointing authority has a wide discretion in assessing the interests of the service, the abilities of the candidates to be taken into consideration and the suitability of the candidates for the post in question. In that regard, the Court's review is limited to consideration of the question whether, having regard to the considerations which influenced the administration in making its assessment, the latter remained within reasonable bounds and did not use its power in a manifestly incorrect way. Such a review does

not mean that the Court substitutes its own assessment for that of the appointing authority.

Provided that the official selected to fill a vacant post satisfied the required conditions, it is pointless for a member of the temporary staff who submitted an admissible candidature to claim that he or she was better qualified to fill the post in question.

(see paras 66-69)

See: 233/85 *Bonino v Commission* [1987] ECR 739, para. 5; T-82/91 *Latham v Commission* [1994] ECR-SC I-A-15 and II-61, para. 62; T-143/98 *Cendrowicz v Commission* [1999] ECR-SC I-A-273 and II-1341, para. 61

4. Article 8 of the Conditions of Employment of Other Servants confers a wide discretion on the administration as regards the duration and renewable nature of the contracts of temporary staff. Consequently, pursuant to that article, the administration may legitimately limit the contract of a member of the temporary staff engaged under Article 2(d) of the Conditions of Employment of Other Servants to an initial two-year period with the possibility of extension by one year, without being bound to renew that contract subsequently.

(see paras 82-84)

5. The duty of the administration to have regard for the interests of its officials reflects the balance of the reciprocal rights and obligations established by the Staff Regulations in the relationship between the official authority and the civil servants. A particular consequence of this duty is that when the official authority takes a decision concerning the situation of an official it should take into consideration all

the factors which may affect its decision and that when doing so it should take into account not only the interests of the service but also the interests of the official concerned.

(see para. 69)

See: 321/85 *Schwiering v Court of Auditors* [1986] ECR 3199, para. 18; T-207/95 *Ibarra Gil v Commission* [1997] ECR-SC I-A-13 and II-31, para. 75