

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)
19 March 2003

Joined Cases T-188/01, T-189/01 and T-190/01

Vassilios Tsarnavas
v
Commission of the European Communities

(Officials – Admissibility – Promotion – Consideration of comparative merits of officials from different services)

Full text in French II - 495

Application for: the annulment of the decisions of the Commission not to promote the applicant in the 1998, 1999 and 2000 promotions procedures.

Held: The decisions of the Commission not to promote the applicant in the 1998, 1999 and 2000 promotions procedures are annulled. The application in Case T-190/01 is dismissed as inadmissible. The Commission is ordered to pay the costs in Cases T-188/01 and T-189/01. The parties are ordered to bear their own costs in Case T-190/01.

Summary

1. Officials – Actions – Act adversely affecting an official – Definition – Decision drawing up the list of officials promoted (Staff Regulations, Arts 90(2) and 91)

2. Officials – Promotion – Decision drawing up the list of officials promoted – Publication – Rules – Availability on the institution's internal computer network

3. Officials – Promotion – Consideration of comparative merits – Rules – Discretion of the administration – Need for the Promotion Committee to consider all officials eligible for promotion in the institution, even though prior consideration within the various administrative units is permissible (Staff Regulations, Art. 45(1), first para.)

1. In the case of acts or decisions drawn up in a procedure involving several stages, and particularly at the end of an internal procedure, it is only those measures which definitively determine the position of the institution upon the conclusion of that procedure which are open to challenge and not intermediate measures whose purpose is to prepare for the final decision.

In the case of the promotions procedure, it is the list of officials promoted which constitutes the act that is open to challenge. It is on publication of that list that the officials who considered themselves eligible for promotion learn, in a manner which is final and not open to doubt, of the assessment of their respective merits, and that their legal position is affected.

It follows that, in a case where an official disputes the list of officials put forward for promotion, the Promotion Committee's decision not to uphold his objection, even if it may have some influence on the promotion decision, constitutes a preparatory act which does not adversely affect an official within the meaning of Article 90(2) of the Staff Regulations. Nor is the official concerned adversely affected by the letter in which the chairman of the Promotion Committee informs him, after the list of officials promoted has been published, of the Committee's decision not to uphold his objection.

(see paras 72-73, 78, 80)

See: T-17/90, T-28/91 and T-17/92 *Camara Alloisio and Others v Commission* [1993] ECR II-841, para. 39; T-144/95 *Michaël v Commission* [1996] ECR-SC I-A-529 and II-1429, para. 30; T-187/98 *Cubero Vermurie v Commission* [2000] ECR-SC I-A-195 and II-885, para. 28

2. Making available to officials on the institution's internal computer network information on the adoption of a measure of general application, such as that relating to the list of officials promoted, must, as administrative practice now stands, be deemed to constitute 'publication' of that measure as provided for in the Staff Regulations, in respect of officials who have direct and easy access to that network at their workstations.

(see para. 83)

3. It is clear from the wording of the first paragraph of Article 45(1) of the Staff Regulations that, in the context of a promotions procedure, the appointing authority is required to make its choice on the basis of a comparative examination of the staff reports and merits of the candidates eligible for promotion. That examination must be carried out with care and impartiality, in the interests of the service and in accordance with the principle of equal treatment. To that end, it has a power under the Staff Regulations to undertake that examination in accordance with the procedure

or method which it considers most appropriate. Nevertheless, prior consideration within each Directorate-General of the personal files of officials eligible for promotion cannot take the place of the comparative examination of all officials eligible for promotion to the same grade which the Promotion Committee must carry out.

That requirement for consideration of the merits of all officials eligible for promotion reflects both the principle of equal treatment of officials and the principle that officials should have reasonable career prospects. A comparative examination restricted only to officials who are eligible for promotion within one Directorate-General would infringe those principles, since it might mean that, even though he has greater merits than those of colleagues in another Directorate-General, an official is not promoted whereas they are, because the fact that there were more meritorious officials than he in his Directorate-General meant that he was not put forward for promotion by that Directorate-General.

(see paras 97-100, 121-122)

See: 62/75 *de Wind v Commission* [1976] ECR 1167, para. 17; T-76/92 *Tsirimokos v Parliament* [1993] ECR II-1281, paras 20 and 21; T-557/93 *Rasmussen v Commission* [1995] ECR-SC I-A-195 and II-603, paras 20 and 21; T-130/95 *X v Commission* [1996] ECR-SC I-A-603 and II-609, para. 67; T-234/97 *Rasmussen v Commission* [1998] ECR-SC I-A-507 and II-1533, para. 24; T-157/98 *Oliveira v Parliament* [1999] ECR-SC I-A-163 and II-851, para. 35; *Cubero Vermurie v Commission*, cited above, para. 61 and, in support of this, para. 84