

JUDGMENT OF THE COURT OF FIRST INSTANCE (Single Judge)
11 July 2002

Case T-263/01

Petros Mavromichalis
v
Commission of the European Communities

(Officials – Prior administrative complaint – Implied rejection – Classification
in grade and step – Statement of grounds)

Full text in Greek II - 731

Application for: annulment of the Commission's decision of 15 December 2000 appointing the applicant and classifying him in Grade A 5, step 1, with effect from 16 December 2000.

Held: The Commission's decision of 15 December 2000 classifying the applicant in Grade A 5, step 1, is annulled with effect from 16 December 2000. The Commission is ordered to pay the costs.

Summary

1. Officials – Recruitment – Appointment in grade – Appointment to the higher grade in the career bracket – Discretion of the appointing authority – Limits – Obligation, in certain cases, to consider the possibility of making such an appointment

(Staff Regulations, Art. 31(2))

2. Officials – Decision adversely affecting an official – Obligation to state grounds – Not fulfilled – Regularisation after the commencement of proceedings – Not permissible

(Staff Regulations, Art. 25, second para.)

1. Although the appointing authority is not, as a general rule, required to examine in each case whether it is appropriate to apply Article 31(2) of the Staff Regulations, which allows recruitment at the higher grade in the career bracket, or to state grounds for a decision not to make use of that provision, it is nevertheless obliged, in special circumstances, such as where a candidate has exceptional qualifications, specifically to assess the possible application of that provision. Such an obligation arises in particular where the specific needs of the department require the recruitment of a specially qualified official, and therefore justify resort to Article 31(2) of the Staff Regulations, or where the person recruited possesses exceptional qualifications and requests the application of those provisions.

(see para. 20)

See: T-17/95 *Alexopoulou v Commission* [1995] ECR-SC I-A-227 and II-683, paras 20 and 21; T-12/97 *Barnett v Commission* [1997] ECR-SC I-A-313 and II-863, paras 48, 49 and 52

2. The total absence of a statement of grounds for the implied rejection of a complaint itself directed against a decision which is not reasoned cannot be remedied by explanations provided by the appointing authority after proceedings have been commenced. A reasoned reply at that stage would no longer fulfil its purpose as regards either the person concerned or the Court. The commencement of proceedings accordingly puts an end to the possibility of that authority's regularising its decision by a reasoned reply rejecting the complaint.

(see para. 27)

See: T-52/90 *Volger v Parliament* [1992] ECR II-121, para. 40, confirmed in C-115/92 P *Parliament v Volger* [1993] ECR I-6549, para. 23; T-351/99 *Brunter v Commission* [2001] ECR-SC I-A-165 and II-757, para. 33