

JUDGMENT OF THE COURT OF FIRST INSTANCE (First Chamber)  
23 April 2002

Case T-372/00

**Mário Campolargo**  
**v**  
**Commission of the European Communities**

(Officials – Recruitment procedures – Application of Article 29(1) of the Staff Regulations – Recruitment of a member of the temporary staff – Withdrawal of an administrative act)

Full text in French . . . . . II - 223

**Application for:** annulment of the Commission's decision of 15 February 2000 annulling the applicant's assignment to the post of Head of Unit XIII.G.2.

**Held:** The decision of the Commission of 15 February 2000 annulling the assignment of Mr Campolargo to the post of Head of Unit XIII.G.2. is annulled. The Commission is ordered to pay the costs.

## Summary

*1. Officials – Principles – Right to be heard – Obligation to hear the person concerned before the act adversely affecting him is adopted – Scope*

*2. Officials – Decision adversely affecting an official – Obligation to state grounds – Scope – Annulment of the appointment of an official or the assignment of a member of the temporary staff to a vacant post in response to another candidate's complaint – Right of the person concerned to have the relevant points communicated to him*

*(Staff Regulations, Art. 25, 2nd para.; Conditions of employment of other servants, Art. 11)*

*3. Officials – Actions – Interest in bringing proceedings – Plea alleging breach of essential procedural requirements – No scope for the exercise of discretion on the part of the administration*

*(Staff Regulations, Art. 91)*

*4. Officials – Recruitment – Procedures – Choice between the appointment of an official or the engagement or reassignment of a member of the temporary staff – Discretion of the competent authority*

*(Staff Regulations, Art. 29(1))*

*5. Officials – Actions – Judgment annulling a decision – Effects – Obligation to take measures to comply with the judgment – Act already executed – Restoration of the person concerned to the legal position he was in prior to the act*

*(Article 233 EC)*

1. Observance of the right to be heard is, in all proceedings initiated against a person which are liable to culminate in a measure adversely affecting that person, a fundamental principle of Community law which must be guaranteed even in the absence of any rules governing the procedure in question.

That principle, which normally requires that the person concerned be heard by the competent authority before the act adversely affecting him is adopted, applies both in regard to disciplinary matters and in regard to other matters relating to the Community civil service. It is only in special circumstances where it proves impossible in practice or incompatible with the interests of the service to consult the person concerned beforehand that the requirements arising from that principle may be satisfied by hearing him within the shortest possible time after the act adversely affecting him has been adopted. For an infringement of the right to be heard to result in an annulment it must, however, be established that, had it not been for that irregularity, the outcome of the procedure might have been different.

(see paras 30-32, 39)

See: 19/70 *Almini v Commission* [1971] ECR 623, para. 11; 17/74 *Transocean Marine Paint v Commission* [1974] ECR 1063, para. 15; 209/78 to 215/78 and 218/78 *Van Landewyck and Others v Commission* [1980] ECR 3125, para. 47; 234/84 *Belgium v Commission* [1986] ECR 2263, para. 27; C-142/87 *Belgium v Commission* [1990] ECR I-959, para. 48; C-241/00 P *Kish Glass v Commission* [2001] ECR I-7759, para. 36; T-169/95 *Quijano v Commission* [1997] ECR-SC I-A-91 and II-273, para. 44; T-131/97 *Gómez de Enterría y Sánchez v Parliament* [1998] ECR-SC I-A-613 and II-1855, para. 55; T-211/98 *F v Commission* [2000] ECR-SC I-A-107 and II-471, paras 28 and 34

2. The purpose of the obligation to state grounds is both to give the person concerned a sufficient indication to determine whether the decision taken by the administration is well founded and whether it is appropriate to bring an action before the Court of First Instance and to enable the latter to carry out its review. The extent of that obligation must be determined on the basis of the specific circumstances of each case, in particular the content of the act, the nature of the grounds put forward and the interest which the addressee may have in receiving explanations.

Where a decision as serious as the annulment of the appointment of an official or of the assignment of a member of the temporary staff to a vacant post is adopted in response to an unsuccessful candidate's complaint, the person concerned is entitled to have communicated to him, if not the text of the complaint itself, at least the relevant points of that complaint and the grounds on which, in the appointing authority's view, it should be allowed.

(see paras 49, 52)

See: T-60/94 *Pierrat v Court of Justice* [1995] ECR-SC I-A-23 and II-77, paras 31 and 32; T-283/97 *Thinus v Commission* [1999] ECR-SC I-A-69 and II-353, para. 73; T-10/99 *Vicente Nuñez v Commission* [2000] ECR-SC I-A-47 and II-203, para. 41

3. An official has no legitimate interest in seeking the annulment of a decision on account of a procedural irregularity, and in particular on account of a breach of the obligation to state grounds, where the administration has no scope for the exercise of discretion but is bound to act as it has done. In such circumstances, annulment of the contested decision could only give rise to the adoption of a decision identical as to substance to the decision annulled.

(see para. 62)

See: T-43/90 *Díaz García v Parliament* [1992] ECR II-2619, para. 54; T-261/97 *Orthmann v Commission* [2000] ECR-SC I-A-181 and II-829, paras 33 and 35

4. The use of the formulation 'whether ... can' in Article 29(1) of the Staff Regulations clearly indicates that the appointing authority is not bound absolutely, where a vacant post is to be filled, to fill that post by way of promotion or transfer, but merely to consider in each case whether those measures are capable of resulting in the appointment of a person of the highest standard of ability, efficiency and integrity. The order of priority established by Article 29(1) of the Staff Regulations

does not prevent the appointing authority from taking into consideration the possibility of obtaining better candidates by using the other procedures mentioned in that paragraph. Consequently, the appointing authority is at liberty to consider the subsequent options even where there are one or more candidates who satisfy all the conditions and requirements set out in the vacancy notice for the post to be filled.

Those principles are capable of being applied to circumstances in which the competent authority, having before it candidatures both from officials and from members of the temporary staff, chooses not to hold an internal competition but to engage or reassign a member of the temporary staff. It is for the competent authority alone to determine whether a member of the temporary staff or an official is better qualified to carry out the duties in question. It is therefore not bound absolutely to proceed by way of promotion or transfer, even where there are suitable candidatures from officials who satisfy all the conditions and requirements set out in the vacancy notice. Its duty is merely to consider whether those measures are capable of resulting in the appointment of a person of the highest standard of ability, efficiency and integrity.

(see paras 93-98)

See: 12/64 and 29/64 *Ley v Commission* [1965] ECR 107, para. 161; 10/82 *Mogensen and Others v Commission* [1983] ECR 2397, para. 10; 341/85, 251/86, 258/86, 259/86, 262/86, 266/86, 222/87 and 232/87 *Van der Stijl and Others v Commission* [1989] ECR 511, para. 33; T-46/89 *Pitrone v Commission* [1990] ECR II-577, paras 61 and 62; T-273/97 *Richard v Parliament* [1999] ECR-SC I-A-45 and II-235, paras 38, 39 and 40, partly confirmed on appeal in C-174/99 P *Parliament v Richard* [2000] ECR I-6189

5. As a consequence of a judgment of annulment, which takes effect *ex tunc* and thus has the effect of retroactively eliminating the annulled measure from the legal system, the defendant institution is required, by virtue of Article 233 EC, to take the necessary measures to reverse the effects of the illegalities established, which,

in the case of an act that has already been executed, involves restoring the person concerned to the legal position he was in prior to that act.

(see para. 109)

See: 22/70 *Commission v Council* [1971] ECR 263, para. 60; 92/78 *Simmenthal v Commission* [1979] ECR 777, para. 32; 21/86 *Samara v Commission* [1987] ECR 795, para. 7; 97/86, 99/86, 193/86 and 215/86 *Asteris and Others v Commission* [1988] ECR 2181, para. 30; T-480/93 and T-483/93 *Antillean Rice Mills and Others v Commission* [1995] ECR II-2305, para. 60; T-481/93 and T-484/93 *Exporteurs in Levende Varkens and Others v Commission* [1995] ECR II-2941, paras 46 and 47; T-171/99 *Corus UK v Commission* [2001] ECR II-2967, para. 50