

JUDGMENT OF THE COURT OF FIRST INSTANCE (Third Chamber)  
26 September 2002

Case T-319/00

**Chantal Borremans and Others**  
**v**  
**Commission of the European Communities**

(Officials – Former employees of the European Association for Cooperation –  
Refusal to appoint as an established official –  
Action for annulment and compensation)

Full text in French . . . . . II - 905

**Application for:** first, annulment of the Commission's decision refusing to appoint the applicants as established officials or to offer them temporary staff contracts for an indefinite period and, second, for compensation for the harm sustained as a result of that decision.

**Held:** The application is dismissed. The parties are ordered to bear their own costs.

## Summary

*1. Officials – Actions – Act adversely affecting an official – Decision to offer temporary staff contracts for a fixed period to members of the auxiliary staff recruited after their dismissal by an association governed by the law of a Member State upon the termination by the Commission of a contract assigning assistance functions to it – Action based on the assertion of a right to be established as officials or to be given temporary staff contracts for an indefinite period – Admissibility*

*(Staff Regulations, Art. 91(1))*

*2. Officials – Equal treatment – Refusal to recruit, by way of derogation from the provisions of the Staff Regulations, employees of an association governed by the law of a Member State, to which assistance functions have been assigned by the Commission – Recourse to derogating recruitment procedures in different contexts – Breach – None*

*3. Officials – Principles – Protection of legitimate expectations – Conditions – Refusal to recruit, by way of derogation from the provisions of the Staff Regulations, employees of an association governed by the law of a Member State, to which assistance functions have been assigned by the Commission – Breach – None*

*4. Officials – Actions – Action for damages – No illegal act committed by the administration – Dismissal*  
*(Staff Regulations, Art. 91)*

1. Former employees of an international association governed by the law of a Member State, who were dismissed by that association when the Commission terminated the contract assigning to it tasks of providing technical assistance and managing expert contracts, and whom the Commission had, as an interim solution, recruited as members of the auxiliary staff, are entitled to bring an action for annulment against the Commission's decision to offer them temporary staff contracts under Article 2(b) of the Conditions of Employment of Other Servants.

That decision, which reflects the Commission's refusal to appoint the persons concerned as established officials or to offer them temporary staff contracts for an indefinite period, affects them adversely in so far as they maintain, relying *inter alia* on the principle of equal treatment as compared with employees of the same association who were previously appointed as established officials and on the principle of the protection of legitimate expectations, that they are entitled to be appointed as established officials or, at the very least, to be given temporary staff contracts for an indefinite period.

(see paras 28-34, 37)

2. There is a breach of the principle of equal treatment where two classes of persons whose factual and legal situations are not essentially different are treated differently or where different situations are treated in an identical manner.

Thus, the employees of an international association governed by the law of a Member State, with which the Commission concluded an agreement assigning to it tasks of providing technical assistance and managing expert contracts, cannot claim, in support of their application for annulment of the Commission's decision offering them temporary staff contracts under Article 2(b) of the Conditions of Employment of Other Servants, that they have been the victims of a breach of the principle of equal treatment on the ground that, in the past, other employees of the same

association were entitled under Community regulations to be appointed as established officials by way of derogation from the provisions of the Staff Regulations concerning the recruitment of officials, where it is obvious that the context in which the decision they are contesting was taken is very different, in particular as regards recruitment policy, from that in which the regulations on which they seek to rely were adopted. Nor are they entitled to rely on other derogating recruitment measures since, on the one hand, a derogating measure cannot, by definition, serve as the basis of an argument by analogy and, on the other hand, those measures were introduced in a different context.

(see paras 41-47)

See: T-86/97 *Apostolidis v Court of Justice* [1998] ECR-SC I-A-167 and II-521, para. 61

3. The right to claim the protection of legitimate expectations, which is one of the fundamental principles of the Community, extends to any individual who is in a situation from which it is clear that, in giving him specific assurances, the Community administration has led him to entertain reasonable expectations.

In that regard, the employees of an international association governed by the law of a Member State are not entitled, in the absence of any specific assurances given by the Commission, to rely on legitimate expectations as to their appointment as established Commission officials. In particular, neither acts by which the Commission may, in the past, have appointed employees of that association as established officials nor the fact that, owing to the close relations which the association maintained with the Commission, the situation of its employees had become very similar to that of Community staff constitute specific assurances. The status of official or servant of the Communities cannot be accorded to the staff of such an association which cannot, whatever may be its relations with the Commission, be assimilated to an administrative unit of the Commission. Nor can specific assurances be inferred from internal Commission documents which, not

being addressed to the persons concerned, cannot, on any view, be characterised as assurances given to them by the administration.

(see paras 63-67)

See: T-66/96 and T-221/97 *Mellet v Court of Justice* [1998] ECR-SC I-A-449 and II-1305, para. 104

4. The Community can be held liable only if a number of conditions are satisfied as regards the illegality of the allegedly wrongful act committed by the institutions, the actual harm suffered and the existence of a causal link between the act and the damage alleged to have been suffered.

An application for damages must therefore be dismissed where the condition relating to the illegality of the allegedly wrongful act committed by the institution is not fulfilled.

(see paras 82-84)

See: 111/86 *Delauche v Commission* [1987] ECR 5345, para. 30; T-82/91 *Latham v Commission* [1994] ECR-SC I-A-15 and II-61, para. 72