

## Case T-46/89

**Antonino Pitrone**

v

**Commission of the European Communities**

(Official — Reorganization of departments —  
Temporary employee — Replacement of an official)

Judgment of the Court of First Instance (Fourth Chamber), 23 October 1990 ..... 579

### Summary of the Judgment

1. *Officials — Recruitment — Vacant post — Engagement of a temporary employee — Applicable provisions*  
(*Staff Regulations of Officials, Art. 4; Conditions of Employment of Other Servants*)
2. *Officials — Assignment — Temporary assignment — Effects*
3. *Officials — Organization of departments — Assignment of staff — Administration's discretion — Limits — Interests of the service — Due regard to equivalence of posts — Engagement of a temporary employee to fill a permanent post — Permissible*  
(*Staff Regulations, Arts 5 and 7*)
4. *Officials — Assignment — Reorganization of departments — Due regard to the equivalence of posts — Scope*  
(*Staff Regulations, Art. 7*)
5. *Officials — Organization of departments — Protection of legitimate expectations — Conditions*

6. *Officials — Assignment — Interests of the service — Account to be taken of all the qualifications of each official*
7. *Officials — Actions — Submissions — Misuse of powers — Concept*

- 1: Article 4 of the Staff Regulations, which provides that no appointment is to be made for any purpose other than that of filling a vacant post and requires that vacant posts in an institution are to be notified to the staff of that institution once the appointing authority decides that the vacancy is to be filled, applies only to posts occupied by officials of the Communities and not to those occupied by temporary staff.
4. While the Staff Regulations seek to ensure that an official retains the grade obtained and a post corresponding to that grade, they do not give him a right to any particular post but instead leave to the appointing authority the power to assign officials in the interests of the service to the various posts which correspond to their grade.

2. The fact that an official's posting is on a temporary basis in no way means that he has retained his former post.

The rule that the post must correspond to the grade, set out in particular in Article 7 of the Staff Regulations, involves, in the event of a change in the duties of an official, a comparison between his present duties and his grade and not between his present and previous duties.

3. In order to achieve effective organization of work and to adapt the organization to varying needs, the Community institutions have a broad discretion to organize their departments to suit the tasks entrusted to them and for those purposes to assign staff available to them in the light of such tasks, on condition however that the staff is assigned in the interests of the service and in conformity with the principle of assignment to an equivalent post.

For a measure to reorganize departments to affect adversely the statutory rights of an official and furnish a cause of action, it is not sufficient that it should bring about a change or even any particular diminution in the official's responsibility; it is necessary that, taken together, his residual responsibilities should fall clearly short of those corresponding to his grade and post, taking account of their character, their importance and their scope.

In particular, in order to fill a permanent post the appointing authority may engage a temporary employee before appointing an official permanently.

5. An official may not plead a breach of the principle of the protection of legitimate expectations unless the administration has given him precise assurances.

The wide discretion that the Community institutions have in the organization of their departments means that a measure reorganizing those departments cannot in itself be regarded as a breach of the legitimate expectations of the officials concerned.

6. It would be contrary to the interests of the service, which require that the administration should be able to benefit from all the professional experience of its officials and employees, to limit the duties that a person may be called upon

to carry out to the qualifications on the basis of which he was initially recruited.

7. The concept of misuse of powers refers to cases where an administrative authority has used its powers for a purpose other than that for which they were conferred on it.

A decision may amount to a misuse of powers only if it appears, on the basis of objective, relevant and consistent evidence, to have been taken for purposes other than those stated.

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fourth Chamber)  
23 October 1990 \*

In Case T-46/89,

**Antonino Pitrone**, an official of the Commission of the European Communities, residing at Tervuren (Belgium), represented by **Nicolas Decker**, of the Luxembourg Bar, with an address for service at the latter's chambers, 16 avenue Marie-Therèse,

applicant,

v

**Commission of the European Communities**, represented by **Sergio Fabro**, a member of its Legal Department, acting as Agent, assisted by **Claude Verbraecken**,

\* Language of the case: French.