

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

8 May 2001 *

In Case T-182/99,

Georges Caravelis, an official of the European Parliament, residing in Brussels (Belgium), represented by C. Tagaras, lawyer,

applicant,

v

European Parliament, represented by Y. Pantalis, acting as Agent, assisted by N. Korogiannakis, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for annulment of the Parliament's decision not to promote the applicant to Grade A 4 during the 1998 promotion procedure and also for compensation for the non-material damage suffered by the applicant,

* Language of the case: Greek.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,

Registrar: G. Herzig, Administrator,

having regard to the written procedure and further to the hearing on 12 December 2000,

gives the following

Judgment

Legal background

- 1 Article 45(1) of the Staff Regulations of Officials of the European Communities ('the Staff Regulations') provides:

'Promotion shall be by decision of the appointing authority. It shall be effected by appointment of the official to the next higher grade in the category or service to which he belongs. Promotion shall be exclusively by selection from among

officials who have completed a minimum period in their grade, after consideration of the comparative merits of the officials eligible for promotion and of the reports on them.

...'

- 2 Promotion of officials of the European Parliament during the 1998 promotion procedure took place according to the procedure laid down in the Internal Guidelines for Promotions Advisory Committees of 17 January 1992 ('the Internal Guidelines') and the decision of the President of the Parliament of 24 February 1992 introducing new arrangements for the management of posts and careers ('the decision of 24 February 1992'). Those provisions were notified and explained to the Parliament staff in a communication of 18 October 1995.

- 3 Article 3 of the Internal Guidelines reads as follows:

'1. The promotions committees shall be responsible for comparing [officials eligible for promotion] within career brackets and between career brackets whose names are put forward for promotion by the relevant Director-General.

2. The promotions committees shall consider the list of [officials eligible for promotion] classified according to the relevant criteria set out in the annex. Points given in staff reports shall be adjusted by coefficients designed to offset variations in the way marks are awarded by each Directorate-General and independent service, excluding administrative units with fewer than five officials who are reported on in the same category. The committees shall consider the latest available staff report whilst also taking into account the previous one, in

particular in the case of candidates who are on the borderline of the promotion quota and any other particularly sensitive cases requiring more particular consideration. The committees shall take into account, above a certain level of marks in the report, the mobility demonstrated by [officials eligible for promotion]....

3. The promotions committees shall draw up, in order of preference, a list of officials whom they recommend for promotion.’

4 Article 2 of the Annex to the Internal Guidelines provides:

‘The committees shall have 22 points to use at their discretion, in order to take into account in particular:

- professional mobility demonstrated by the [official eligible for promotion] on the official’s own initiative,

- performance of duties at a level above the official’s grade without appointment as a temporary replacement,

- the introduction of new procedures to encourage greater efficiency at work.’

5 Point II(c) of the declaration annexed to the decision of 24 February 1992 reads:

‘The promotions committees shall take as the basis for their consideration lists of all the officials [eligible for promotion] within the meaning of Article 45 of the Staff Regulations, prepared by the Directorate-General for Personnel, Budget and Finance and the information contained in any proposals put forward by each of the Directors-General.’

Background to the dispute

- 6 The applicant took up his post at the Parliament on 14 January 1982 as an administrator in Grade A 7. He was assigned to the secretariat of the Committee on Economic and Monetary Affairs within Directorate-General II — Committees and Delegations (DG II). He was promoted to Grade A 6 on 1 April 1984 and to Grade A 5 on 1 January 1993.
- 7 From 1 October 1997 to 30 September 1998 the applicant was seconded to the Bank of England. He returned to the secretariat of the Committee on Economic and Monetary Affairs on 1 October 1998.
- 8 During the 1998 promotion procedure the appointing authority made provision for eight officials to be promoted to Grade A 4. The applicant was seventh on the list of officials eligible for promotion prepared by the Directorate-General for Personnel, having the same number of points as two of his colleagues, that is to

say, 71 points, broken down as follows: 59 according to his staff report and 12 according to his age and level of seniority.

- 9 In a note dated 5 June 1998 the Directorate-General for Personnel requested Directors-General to submit recommendations to the Promotions Committees to assist them in their consideration of candidates. According to the note, 'the recommendations should contain any recent material information not contained in the staff reports'. It also stated that the number of names recommended should be limited to 20% of the officials eligible for promotion within each Directorate-General.

- 10 In the context of those recommendations, the applicant was placed seventh on the list prepared by his Directorate-General, which meant that his recommendation could not be taken into account since it was outside the aforementioned quota of 20%.

- 11 On 30 June 1998 the Promotions Committee for Category A ('the Promotions Committee') drew up a list of officials, containing eight names, to be put forward to the appointing authority for promotion to Grade A 4. The applicant's name did not appear on that list.

- 12 On 23 September 1998 the appointing authority decided to promote the officials whose names had been put forward by the Promotions Committee. That decision was made public on 21 October 1998. Four candidates were promoted who had fewer points than the applicant (70.75 in the case of three of them and 69.75 in the case of the fourth). Two of those four candidates also had fewer points than the applicant according to their staff reports.

- 13 By letter of 18 January 1999, lodged on 20 January 1999, the applicant brought a complaint under Article 90(2) of the Staff Regulations, in which he requested the appointing authority to reconsider its decision with regard to the list of promotions it had drawn up for 1998 and to add his name to that list.

- 14 By decision of 31 May 1999 the appointing authority dismissed that complaint.

Procedure and forms of order sought

- 15 By application lodged at the Registry of the Court of First Instance on 22 July 1999 the applicant brought the present action.

- 16 Upon hearing the report of the Judge-Rapporteur, the Court (Fifth Chamber) decided to open the oral procedure. By way of measures of organisation of the procedure, it requested the Parliament to produce certain documents, in particular the minutes of the meeting of the Promotions Committee which took place on 30 June 1998 ('the minutes'), and to answer some questions in writing before the hearing. The Parliament complied with those requests.

- 17 The hearing, at which the parties presented oral argument and replied to oral questions from the Court, was held on 12 December 2000.

18 The applicant claims that the Court should:

- annul the Parliament's decision not to promote him to Grade A 4 during the 1998 promotion procedure;

- annul the Parliament's decision of 31 May 1999 dismissing his complaint of 18 January 1999;

- in the alternative, order the Parliament to pay him the sum of 100 000 Belgian Francs (BEF) in compensation for the non-material damage he suffered;

- order the production of the minutes of the meetings of the Promotions Committee relating to promotions to Grade A 4 during the 1998 promotion procedure;

- order the Parliament to pay the costs.

19 The Parliament contends that the Court should:

- dismiss the application as unfounded;

- dismiss, in consequence, the application for compensation for non-material damage;

- make an appropriate order as to costs.

The claim for annulment

- 20 In support of his claim for annulment the applicant puts forward a single plea alleging infringement of Article 45 of the Staff Regulations and the Internal Guidelines, which is divided into three limbs. First, he argues that his merits were not properly compared with those of the other officials eligible for promotion, in breach of Article 45 of the Staff Regulations. Secondly, the applicant asserts that the criteria on which the recommendations of the Directorates-General are based are unlawful. Thirdly, he challenges the way in which the 22 additional points provided for in Article 2 of the annex to the Internal Guidelines were allocated. In addition, at the hearing the applicant raised a new complaint alleging that one of the persons taking part in the meeting of the Promotions Committee on 30 June 1998 was not entitled to do so.
- 21 In his application the applicant also asserted that there was no legal basis for taking into account the recommendations of the Directorates-General in the context of the contested promotion procedure. He abandoned this complaint in his reply.
- 22 The Court considers that the first limb of the plea should be examined first.

Arguments of the parties

- 23 The applicant contends that the contested promotion procedure is unlawful in that the Promotions Committee merely considered the comparative merits of those officials eligible for promotion who had been recommended by the Directorates-General and who were within the 20% quota. He notes that to observe that quota his own Directorate-General could submit recommendations only in respect of four officials. Because he was placed seventh on the list of officials recommended by his Directorate-General his case was not considered by the Promotions Committee, in breach of Article 45 of the Staff Regulations. The contested measures should therefore be annulled, in accordance with the judgment of the Court of First Instance in Case T-76/98 *Hamptaux v Commission* [1999] ECR-SC I-A-59 and II-303, paragraphs 39 to 51.
- 24 In his reply the applicant adds that in referring to a ‘*de facto* equivalence’ as regards the difference between the number of points awarded in his staff report and those awarded in the staff reports of the two candidates who were promoted the Parliament failed to have regard to the fact that two officials were promoted although their marks were lower than his.
- 25 The Parliament maintains that the applicant’s merits underwent proper and thorough comparative consideration. It claims that the merits of the officials who were promoted following that consideration were superior to those of the other candidates, including the applicant. Moreover, the applicant does not adduce any evidence to demonstrate that the appointing authority made a manifest error of assessment (Case T-143/98 *Cendrowicz v Commission* [1999] ECR-SC I-A-273 and II-1341, paragraphs 60 to 67).
- 26 The Parliament does not dispute the fact that the Promotions Committee gave extensive consideration to the recommendations of the Directorates-General, in accordance with the decision of 24 February 1992 and the communication of 18 October 1995. However, the Promotions Committee, whilst taking account of the order in which the officials eligible for promotion appeared on the list

prepared by the Directorate-General for Personnel, also took into account other factors, such as professional mobility, whether duties had been performed at a more senior level and the introduction of new procedures designed to improve efficiency at work.

- 27 It states that the Promotions Committee, having studied the cases of all the officials in a favourable position on the list of officials eligible for promotion, including the applicant, submitted a list of officials which it recommended for promotion to the appointing authority. It points out in this connection that the drafting of a list of officials eligible for promotion and the deliberations and proposals of the Promotions Committee are only intermediate and preparatory stages to the final decision of the appointing authority.
- 28 In this case, the appointing authority took the final decision as regards the promotions after considering all the information in its possession, that is to say, the list of officials eligible for promotion prepared by the Directorate-General for Personnel, the assessments and proposals of the Promotions Committee, the recommendations and proposals of the directorates-general and all other relevant information.
- 29 Furthermore, the Parliament contends that the comparative assessment made on the basis of the staff reports shows that six of the eight officials promoted had marks equal to or higher than the applicant's. As regards the two other officials who were promoted, the number of points placing them below the applicant, once the adjustment coefficient was applied, was only 0.25 of a point in one case and one point in the other. This amounted therefore, essentially, to '*de facto* equivalence'. In addition, one of the two officials had performed duties at a more senior level and his name was the only one recommended by his Directorate-General. As regards the other official, although he was recommended in second place his level of responsibilities justified absolute priority according to his Directorate-General.

Findings of the Court

30 It is settled case-law that when considering the comparative merits to be taken into account in deciding on promotion pursuant to Article 45 of the Staff Regulations, the appointing authority possesses a wide discretion and in that regard review by the Community court must be confined to the question whether, having regard to the methods and procedures used by the administration to make its assessment, the latter has remained within reasonable bounds and has not manifestly misused its power. The Court cannot therefore substitute its assessment of the qualifications and merits of candidates for that of the appointing authority (see in particular Case T-283/97 *Thinus v Commission* [1999] ECR-SC I-A-69 and II-353, paragraph 42).

31 It is expressly provided in the first subparagraph of Article 45(1) of the Staff Regulations that in the context of a promotion procedure the appointing authority is required to make its selection after comparative consideration of the staff reports and the respective merits of the eligible officials. To that end it enjoys power under the Staff Regulations to undertake such consideration using the procedure or method it regards as most appropriate, as the Community judicature has consistently held (see in particular Case T-22/99 *Rose v Commission* [2000] ECR-SC II-115, paragraph 55).

32 However, the discretion thus allowed to the administration is subject to the need to undertake a comparative consideration of candidatures with care and impartiality, in the interests of the service and in accordance with the principle of equal treatment. In practice, such consideration must be undertaken on a basis of equality, using comparable sources of information (see Case T-157/98 *Oliveira v Parliament* [1999] ECR-SC I-A-163 and II-851, paragraph 35). Moreover, the appointing authority may take candidates' age and seniority in grade or service into consideration only as a subsidiary factor (see Case T-221/96 *Manzo-Tafaro v Commission* [1998] ECR-SC I-A-115 and II-307, paragraph 17).

- 33 In addition, the staff report is a vital point of reference every time an official's career is taken into consideration by the authorities (see in particular Case T-234/97 *Rasmussen v Commission* [1998] ECR-SC I-A-507 and II-1533, paragraph 36). The Court of First Instance has held, moreover, that prior consideration within each Directorate-General of the personal files of officials eligible for promotion is not likely to hinder proper consideration of their comparative merits and, on the contrary, is in accordance with the principle of good administration. However, it has also held that such prior consideration within the Directorates-General must not take the place of the comparative consideration which must be undertaken subsequently by the Promotions Committee, where provision is made for such consideration. Every official eligible for promotion is therefore entitled to expect the Promotions Committee to compare his merits with those of other officials eligible for promotion to the grade concerned (see *Rose*, cited above, paragraphs 56 and 57).
- 34 Furthermore, the appointing authority cannot be allowed simply to consider the merits of those officials who are placed at the top of the lists prepared by the various Directorates-General, since that would render consideration of the comparative merits of all the officials eligible for promotion redundant (see *Rose*, paragraph 59).
- 35 In this context, it must be pointed out straight away that there is a wealth of sufficiently convergent evidence pointing to the conclusion in this case that no real consideration took place of the comparative merits of all the officials eligible for promotion.
- 36 The file shows that 54 officials of the Parliament were eligible for promotion to Grade A 4 when the contested promotion procedure began. The Directorate-General for Personnel drew up a list of those officials in descending order according to the marks they received in their staff reports, showing the original

marks adjusted by the coefficient calculated for each Directorate-General, according to age and level of seniority. The total points received by the first 33 officials on the list range from 73 to 69.

Summary of the list prepared by the Directorate-General for Personnel on 1.1.1998 showing officials eligible for promotion

Category: A Grade: 5

Promotable: 54

N°	Name	DG	Marks before adjustment	Adjustment coefficient	Total points	General total
1	CC	II	59	0	59	73
2	KC	II	60	0	60	72
3	CCH	III	59	0	59	71.75
4	PF	IV	58	-0.25	57.75	71.75
5	BK	LS	58	0.75	58.75	71.25
6	HHG	II	58	0	58	71.25
7	FN	II	60	0	60	71
8	Caravelis	II	59	0	59	71
9	AD	II	59	0	59	71
11	FP	I	59	0.75	59.75	70.75
12	WP	IV	59	-0.25	58.75	70.75
15	DSDI	V	57	1	58	70.75
25	RQJL	LS	59	0.75	59.75	69.75
27	AG	I	58	0.75	58.75	69.75
33	VHJ	VI	60	-1	59	69

Total points = unadjusted marks × adjustment coefficient calculated by DG.
 General total = total points + age + seniority.

37 In addition, each Directorate-General made recommendations as to which officials should be promoted. Directorate-General I (Presidency) made two recommendations relating first to FP and secondly to AG. Directorate-General II (Committees and Delegations) recommended seven officials, namely, in descending order, KC, FN, CC, VARJ, HHG, AD and, lastly, the applicant. Directorate-General III (Information and Public Relations) recommended three officials: CCH was first, LJ second and SPJ third. Directorate-General IV (Research) recommended four officials, namely, in descending order, PF, WP, LA and PE. Directorate-General V (Personnel, Budget and Finance) recommended three officials: DSDI was first, PP second and PR third. Directorates-General VI (Administration) and VII (Translation and General Services) and the Legal Service recommended VHJ, BM and RQJL respectively.

38 It is clear, however, from the minutes of the Promotions Committee that the recommendations of the Directorates-General could only be ‘accepted in respect of 20% of the [officials eligible for promotion]’. It should be observed in this regard that only fourteen recommendations, namely the two made by DG I, four of the seven put forward by DG II, two of the three made by DG III, two of the four put forward by DG IV, one of the three made by DG V and the recommendations made by DG VI, DG VII and the Legal Service, were regarded as acceptable and taken into consideration by the Promotions Committee during the contested promotion procedure. Thus, from the outset of the procedure the Promotions Committee regarded the recommendations relating to other officials eligible for promotion, including the applicant, as ‘unacceptable’. Furthermore, despite the brief comment at the end of the minutes that ‘[t]he Committee also considered the other [officials eligible for promotion] in the appropriate order’, the minutes do not contain any reference to the names of the officials outside the 20% quota. In such circumstances, it appears prima facie from the minutes that the applicant’s merits were not taken into consideration by the Promotions Committee during the contested promotion procedure.

39 Furthermore, it is clear from the minutes of the Promotions Committee that it went on to draw up on the basis of the fourteen recommendations regarded as

‘acceptable’ an initial list of the officials who had been recommended in first place by their Directorate-General or service. Following a comparison of the merits of those officials, four candidates were selected and put forward for promotion, namely KC, CCH, FP and RQJL. It should be mentioned that those officials appeared on the list prepared by the Directorate-General for Personnel in second, third, eleventh and twenty-fifth place. It is clear that, according to the method of comparison used by the Promotions Committee, the merits of RQJL were compared with those of KC, although he was listed 23 places below him on the list prepared by the Directorate-General for Personnel. It would appear that RQJL was included in the Promotions Committee’s first list of officials eligible for promotion because he was the only official recommended by the Legal Service. Subsequently the Promotions Committee drew up a second list of officials eligible for promotion, comprising four names, after comparing the merits of the officials who had been recommended in second or third place by their Directorate-General or service with the merits of the two officials who appeared on its initial list but whose situation had remained ‘in abeyance pending further comparative consideration’.

40 Following the procedure before the Promotions Committee, the Committee put forward eight officials for promotion, namely those appearing in first, second, third, seventh, eleventh, twelfth, fifteenth and twenty-fifth place on the list prepared by the Directorate-General for Personnel. It should be noted once again that the names of the other officials eligible for promotion, even those placed before the official in twenty-fifth place on the abovementioned list, including the applicant, do not appear in the minutes of the Promotions Committee. Although it contains very detailed information on the officials who were the subject of recommendations within the 20% quota established by the note of 5 June 1998, the minutes mention the other officials eligible for promotion only very briefly and in a general manner. With regard to the applicant, it appears he was in seventh place on the list prepared by his Directorate-General in the context of the recommendations submitted to the Promotions Committee, in breach of the abovementioned quota. Consequently, despite the fact that with an overall total of 71 points he was in equal seventh place with two other candidates on the list

prepared by the Directorate-General for Personnel, his merits were not compared, for example, with those of RQJL who, with an overall total of 69.75 points, was in twenty-fifth place on that list.

41 In reality therefore only the merits of the officials who were the subject of recommendations within the 20% quota of officials eligible for promotion in each Directorate-General were given comparative consideration by the Promotions Committee. Indeed, the recommendations of the Directorates-General, and more particularly the order in which the candidates were recommended, instead of providing additional information to be taken into consideration when comparing the merits of the officials eligible for promotion, became the basis upon which a comparison limited to fourteen of those officials was made. Only the decisive role played by the recommendations in the promotion procedure can explain how, even at the very first stage of comparison of the merits of the officials eligible for promotion, the officials in second, third, eleventh and twenty-fifth place on the list of officials eligible for promotion prepared by the Directorate-General for Personnel were given comparative consideration, rather than the officials in the top eight places on that list. It therefore appears that the Promotions Committee did not compare the merits of all the officials eligible for promotion and that not all the staff reports of those officials were taken into consideration by the Committee although those reports represent a vital element of the assessment.

42 The Parliament contended, both in its written pleadings and at the hearing, that the list prepared by the Directorate-General for Personnel, and the deliberations and proposals of the Promotions Committee, are only intermediate and preparatory stages to the final promotion decision and that the appointing authority took the latter decision after consideration of all the information in its possession, namely, the abovementioned list, the Promotions Committee's assessments and proposals, the recommendations and proposals of the Directorates-General and any other relevant information.

43 In this regard it should be noted that, according to settled case-law, the appointing authority is required to take into account the list of candidates for promotion drawn up by the Promotions Committee even if it considers itself obliged not to follow it (Case T-25/90 *Schönherr v ESC* [1992] ECR-SC II-63, paragraph 28). In this case, the appointing authority decided to promote the same officials as those whose names were put forward by the Promotions Committee. Moreover, at the hearing the Parliament confirmed that the appointing authority, in this case the Secretary-General of the Parliament, had at his disposal the staff reports of the officials eligible for promotion, the list of those officials prepared by the Directorate-General for Personnel, the recommendations of the Directorates-General and the minutes and proposals of the Promotions Committee. Consequently, the appointing authority had knowledge not only of the last two items of information but also of the manner in which the Promotions Committee had taken into consideration the merits of the officials eligible for promotion. In the absence of evidence to the contrary, there is every reason to believe that the appointing authority selected for promotion to Grade A 4 the same officials as the Promotions Committee, having followed the same procedure or method of comparison. In those circumstances, it was incumbent on the Parliament to prove that the procedural irregularities within the Promotions Committee did not distort the final result of the contested promotion procedure and that the appointing authority adopted a different method of comparison from the Committee and did indeed compare the merits of all the officials eligible for promotion.

44 The fact remains, however, that the Parliament has not adduced any evidence whatsoever that the appointing authority did indeed make a comparison of the merits of all the officials eligible for promotion. Moreover, the Parliament has failed to explain how it was that the appointing authority managed to promote exactly the same officials as those proposed by the Promotions Committee using a method for the comparison of merits which was allegedly different from that used by the Committee.

45 It is clear from these considerations that both the procedure in the Promotions Committee and the procedure before the appointing authority must be regarded as flawed since they did not include comparative consideration of the merits of all the officials eligible for promotion.

- 46 The decision of the Parliament not to promote the applicant to Grade A 4 during the 1998 promotion procedure must therefore be annulled; there is no cause to consider the validity of the other limbs of the plea relied on by the applicant or the new complaint raised by the applicant at the hearing.

The claim for compensation

Arguments of the parties

- 47 In the alternative, the applicant requests the Court to order the Parliament to pay the sum of BEF 100 000 in compensation for the non-material damage sustained by him as a result of the Parliament failing to ask the Bank of England in time for details of his professional merits whilst he was seconded to it, namely between 1 October 1997 and 30 September 1998, although the professional merits of the other candidates during that period were subject to a comparative assessment when recommendations were being prepared. In his reply the applicant argues that this request for compensation is admissible.
- 48 The Parliament considers that the request for compensation for non-material damage is inadmissible. Moreover, it asserts that the applicant has not demonstrated the existence of unlawful conduct, actual damage or a causal link between the comparative assessment of his professional performance during his secondment and the establishment of the order of priority in the recommenda-

tions of his Directorate-General (Case T-165/89 *Plug v Commission* [1992] ECR II-367).

Findings of the Court

49 Even if the applicant did suffer damage, annulment of the decision refusing promotion constitutes, in any event, sufficient and adequate compensation for that damage (Case T-10/99 *Nuñez v Commission* [2000] ECR-SC I-47 and II-203, paragraph 48); there is therefore no need to rule on the admissibility of the claim for compensation.

50 The request that the Parliament should be ordered to pay the sum of BEF 100 000 in compensation for the non-material damage allegedly suffered must therefore be dismissed.

Costs

51 Under Article 87(2) of the Rules of Procedure of the Court of First Instance, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Parliament has been unsuccessful, it must be ordered to pay the costs as applied for by the applicant.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber)

hereby:

1. Annuls the decision of the Parliament not to promote the applicant to Grade A 4 during the 1998 promotion procedure;
2. Dismisses the application for compensation;
3. Orders the Parliament to pay the costs.

Lindh

García-Valdecasas

Cooke

Delivered in open court in Luxembourg on 8 May 2001.

H. Jung

Registrar

P. Lindh

President