

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)  
23 January 2003

Case T-181/01

**Chantal Hectors**  
v  
**European Parliament**

(Officials – Temporary staff – Recruitment –  
Grounds – Manifest error of assessment –  
Equal treatment of men and women)

Full text in French . . . . . II - 103

**Application for:** first, annulment of the decisions taken by the authority empowered to conclude contracts of employment appointing Mr B to the post of Dutch-language administrator in the European People's Party (Christian Democrats) and European Democrats Group within the European Parliament and rejecting the applicant's candidature for that post and, second, an order that the Parliament pay compensation in respect of the material and non-material damage which the applicant claims to have suffered.

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

## Summary

*1. Officials – Decision adversely affecting an official – Rejection of an application – Duty to state reasons at the latest when the complaint is rejected – Subject-matter – Scope – Member of the temporary staff with a political group in the Parliament*

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

*2. Officials – Members of the temporary staff – Recruitment – Candidates entered on list of suitable candidates – Discretion of the administration – Judicial review – Limits*

*3. Officials – Temporary staff – Recruitment – Procedure – Discretion of the appointing authority – Pre-recruitment interview – Engagement by a political group in the Parliament*

*(Conditions of employment of other servants, Art. 2(c))*

*4. Officials – Equal treatment – Equal treatment of male and female officials – Fundamental right – Observance ensured by the Community judicature – Rejection of the candidature of a pregnant woman – Burden of proof*

*(EC Treaty, Art. 119 (Arts 117 to 120 were replaced by Arts 136 to 143 EC); Council Directives 97/80, Art. 4 and 2000/78, Art. 10)*

*5. Officials – Equal treatment – Equal treatment of male and female officials – Derogations – Measures to promote equality of opportunity between men and women – Conditions*

*(Art. 141(4) EC)*

1. Under the second paragraph of Article 25 of the Staff Regulations, applicable by analogy to temporary staff in accordance with Article 11 of the Conditions of employment of other servants of the European Communities, any decision adversely affecting a member of staff must state the grounds on which it is based. In the case of decisions involving a choice between several candidates, the appointing authority or, by analogy, the authority authorised to conclude contracts of employment, is under an obligation to state its reasons, at least at the stage when a complaint by an unsuccessful candidate against the decision rejecting his candidature, and/or against the decision appointing another candidate, is rejected. The purpose of that obligation is both to enable the Community judicature to review the legality of the contested decision and to give the person concerned a sufficient indication to determine whether that decision is well founded or contains defects allowing its legality to be challenged.

In the case of a post as a member of the temporary staff with a political group in the Parliament, which, because a relationship of mutual trust is essential, the leadership of that group is entirely at liberty to fill with the candidate of its choice from the list of suitable candidates, the reasons stated may relate only to compliance with the statutory conditions governing the regularity of the appointment procedure.

(see paras 35-37, 40, 41)

See: C-169/88 *Prelle v Commission* [1989] ECR 4335, para. 9; T-45/90 *Speybrouck v Parliament* [1992] ECR II-33, para. 94; T-25/92 *Vela Palacios v ESC* [1993] ECR II-201, para. 22; T-60/94 *Pierrat v Court of Justice* [1995] ECR-SC I-A-23 and II-77, paras 30 and 32; T-123/95 *B v Parliament* [1997] ECR-SC I-A-245 and II-697, para. 72; T-372/00 *Campolargo v Commission* [2002] ECR-SC I-A-49 and II-223, para. 49

2. The appointing authority has a very wide discretion in appointing candidates on a list of suitable candidates, in so far as it is under no obligation to follow the precise order of merit of the candidates on that list. The same principle applies a fortiori to the recruitment of members of the temporary staff, since the authority

authorised to conclude contracts of employment has an even wider discretion in choosing candidates.

The Court of First Instance may not substitute its own assessment of the candidates' qualifications for that of the latter authority. The review which it must carry out is confined to the question of whether the appointing authority, having regard to the considerations which may have led it to its assessment, kept within reasonable limits and did not manifestly misuse its power.

(see paras 65, 69)

See: T-217/96 *Fabert-Goossens v Commission* [1998] ECR-SC I-A-607 and II-1841, paras 28 and 29; T-152/00 *E v Commission* [2001] ECR-SC I-A-179 and II-813, paras 28 and 29

3. The procedures and obligations relating to the recruitment of officials do not apply where a post as a member of the temporary staff is to be filled. The authority authorised to conclude contracts of engagement has a very wide discretion both in the choice of the methods of organising the selection procedure and in the conduct of that procedure.

The authority may not, therefore, be held to have exceeded its wide discretion in having organised interviews between applicants on a list of suitable candidates and members of a national delegation from a political group in the Parliament on whose behalf the recruitment was organised. The organisation of such interviews as part of the recruitment procedure is consistent with the need for a relationship of mutual trust which determines the engagement of a member of the temporary staff by a

political group in the Parliament on the basis of Article 2(c) of the Conditions of employment of other servants.

However, the opinion issued by the national delegation from the political group may not replace the final comparative examination to be carried out by the leadership of the political group in the Parliament in its capacity as the authority authorised to conclude contracts of employment.

(see paras 94, 102, 104)

See: *Speybrouck v Parliament*, cited above, para. 94; *B v Parliament*, cited above, para. 72; T-95/01 *Coget and Others v Court of Auditors* [2001] ECR-SC I-A-191 and II-879, para. 56

4. The principle of equal treatment for men and women in matters of employment and, at the same time, the principle of the prohibition of any direct or indirect discrimination on grounds of sex form part of the fundamental rights the observance of which the Community judicature must ensure pursuant to Article 220 EC.

In that respect, the Court of Justice has recognised that it is necessary to ensure equality as between female and male workers employed by the Community itself, under the Staff Regulations. The requirements which that principle imposes in relations between the Community institutions and their staff are not limited to those resulting from Article 119 of the EEC Treaty (Articles 117 to 120 were replaced by Articles 136 EC to 143 EC), the wording of which remains relevant, or from the Community directives adopted in that field. That applies by analogy to the recruitment of members of the temporary staff.

In that context, it has been recognised in particular that refusal to employ a female worker on account of pregnancy constitutes direct discrimination on grounds of sex. However, under Article 10 of Directive 2000/78 and Article 4 of Directive 97/80, it is for the respondent to prove that there has been no breach of the principle of equal treatment only if the applicant establishes facts from which it may be presumed that there has been direct or indirect discrimination.

Discrimination may not be presumed to exist merely because a candidate is pregnant, including in cases where the administration has been informed of that fact. In any event, the administration may not be considered to have breached the principle of equal treatment for men and women where it has not made a manifest error of assessment in selecting the candidature of a male candidate.

(see paras 117-121, 124)

See: 149/77 *Defrenne* [1978] ECR 1365, paras 26 and 27; 75/82 and 117/82 *Razzouk and Beydoun v Commission* [1984] ECR 1509, paras 16 and 17; C-177/88 *Dekker* [1990] ECR I-3941, para. 14; *Speybrouck v Parliament*, cited above, paras 247 and 48; T-112/96 and T-115/96 *Séché v Commission* [1999] ECR-SC I-A-115 and II-623, para. 116

5. Article 141(4) EC merely makes it possible, not mandatory, to discriminate positively in favour of women. If that provision may be relied on as against a Community institution, that possibility is open, as far as concerns recruitment, only where the candidatures in question indicate equal qualifications and have been assessed objectively.

(see paras 126-128)

See: C-409/95 *Marschall* [1997] ECR I-6363