

JUDGMENT OF THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

11 July 2007 *

In Case T-58/05,

Isabel Clara Centeno Mediavilla, residing in Seville (Spain),

Delphine Fumey, residing in Evere (Belgium),

Eva Gerhards, residing in Brussels (Belgium),

Iona M. S. Hamilton, residing in Brussels,

Raymond Hill, residing in Brussels,

Jean Huby, residing in Brussels,

Patrick Klein, residing in Brussels,

Domenico Lombardi, residing in Brussels,

Thomas Millar, residing in London (United Kingdom),

* Language of the case: French.

Miltiadis Moraitis, residing in Woluwe-Saint-Lambert (Belgium),

Ansa Norman Palmer, residing in Brussels,

Nicola Robinson, residing in Brussels,

François-Xavier Rouxel, residing in Brussels,

Marta Silva Mendes, residing in Brussels,

Peter van den Hul, residing in Tervuren (Belgium),

Fritz Von Nordheim Nielsen, residing in Hoeilaart (Belgium),

Michaël Zouridakis, residing in Brussels,

represented initially by G. Vandersanden, L. Levi and A. Finchelstein, and subsequently by Vandersanden and Levi, lawyers,

applicants,

v

Commission of the European Communities, represented by J. Currall and H. Kraemer, acting as Agents,

defendant,

supported by

Council of the European Union, represented initially by M. Arpio Santacruz, M. Sims and I. Sulce, and subsequently by Arpio Santacruz and Sulce, acting as Agents,

intervener,

APPLICATION for annulment of the decisions appointing the applicants probationary officials, in so far as they fix their classification in grade in accordance with the transitional provisions of Article 12(3) of Annex XIII to the Staff Regulations of Officials of the European Communities, as amended by Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 (OJ 2004 L 124, p. 1),

THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES
(Fourth Chamber, Extended Composition),

composed of H. Legal, President, I. Wiszniewska-Białecka, V. Vadapalas, E. Moavero Milanese and N. Wahl, Judges,

Registrar: K. Pocheć, Administrator,

having regard to the written procedure and further to the hearing on 6 December 2006,

gives the following

Judgment

Legal context

- ¹ In the version applicable until 30 April 2004, Article 31 of the Staff Regulations of officials of the European Communities ('the old Staff Regulations') provided that the successful candidates in open competitions, who were selected by the appointing authority from lists of suitable candidates drawn up by the selection boards following selection tests, were to be appointed, in the case of officials in Category A, to the starting grade, and in the case of officials in other categories, to the starting grade for the post for which they had been recruited.

- 2 Pursuant to Article 2 of Council Regulation (EC, Euratom) No 723/2004 of 22 March 2004 amending the old Staff Regulations and the Conditions of Employment of other servants of the European Communities (OJ 2004 L 124, p. 1), that regulation entered into force on 1 May 2004.
- 3 It introduced a new careers system in the Community civil service by substituting new function groups of administrators (AD) and assistants (AST) for the old categories of officials of the European Communities, A, B, C and D.
- 4 As a result of that amendment, Article 5 of the Staff Regulations, in its wording in force as from 1 May 2004 ('the Staff Regulations'), now provides as follows:

'1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in an administrators' function group ("AD") and an assistants' function group ("AST").

2. Function group AD shall comprise twelve grades, corresponding to administrative, advisory, linguistic and scientific duties. Function group AST shall comprise eleven grades, corresponding to executive, technical and clerical duties.

...

4. A table showing types of posts is given in Annex I, point A. By reference to this table, each institution shall define the duties and powers attaching to each type of post after consulting the Staff Regulations Committee.

5. Identical conditions of recruitment and service career shall apply to all officials belonging to the same function group.'

5 Article 31 of the Staff Regulations provides:

'1. Candidates selected shall be appointed to the grade of the function group set out in the notice of the competition they have passed.

2. Without prejudice to Article 29(2), officials shall be recruited only at grades AST 1 to AST 4 or AD 5 to AD 8. The grade of the competition notice shall be determined by the institution in accordance with the following criteria:

(a) the objective of recruiting officials of the highest standard as defined in Article 27;

(b) the quality of the professional experience required.

To address specific needs of the institutions, labour market conditions prevailing in the Community may also be taken into account when recruiting officials.

...'

- 6 In the version in force since 1 May 2004, the Staff Regulations include a new annex, Annex XIII, entitled 'Transitional measures applicable to officials of the Communities', the relevant provisions of which are worded as follows:

'Article 1

1. For the period from 1 May 2004 to 30 April 2006 Article 5(1) and (2) of the Staff Regulations are replaced by the following:

"1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in four categories A*, B*, C* and D*, in descending order of rank.

2. Category A* shall comprise twelve grades, category B* shall comprise nine grades, category C* shall comprise seven grades and category D* shall contain five grades."

2. Any reference to the date of recruitment shall be taken to refer to the date of entry into service.

Article 2

1. On 1 May 2004, and subject to Article 8 of this Annex, the grades of officials having one of the administrative statuses set out in Article 35 of the Staff Regulations shall be renamed as follows:

Former grade	New (intermediate) grade						
A1	A*16						
A2	A*15						
A3/LA3	A*14						
A4/LA4	A*12						
A5/LA5	A*11						
A6/LA6	A*10	B1	B*10				
A7/LA7	A*8	B2	B*8				
A8/LA8	A*7	B3	B*7	C1	C*6		
		B4	B*6	C2	C*5		
		B5	B*5	C3	C*4	D1	D*4
				C4	C*3	D2	D*3
				C5	C*2	D3	D*2
						D4	D*1

...

7 Article 4 of Annex XIII to the Staff Regulations provides *inter alia* as follows:

‘For the purposes of these provisions and for the period specified in the introductory sentence of Article 1 of this Annex,

(a) the words “function group” shall be replaced by “category”:

(i) in the Staff Regulations in:

— Article 5(5),

— ...

— Article 31(1),

...

(b) the word “function group AD” shall be replaced by “category A*”:

(i) in the Staff Regulations in:

— Article 5(3), point (c);

...

(e) in Article 5(3)(a) of the Staff Regulations the words “function group AST” are replaced by “categories B* and C*”;

...

(n) in Article 5(4) of the Staff Regulations, the reference to “Annex I, point A” [is] replaced by a reference to “Annex XIII.1”;

...’

8 Article 12 of Annexe XIII to the Staff Regulations provides:

‘1. Between 1 May 2004 and 30 April 2006, reference to grades in function groups AST and AD in paragraph 2 and 3 of Article 31 of the Staff Regulations shall be made as follows:

— AST 1 to AST 4: C*1 to C*2 and B*3 to B*4

— AD 5 to AD 8: A*5 to A*8

— AD 9, AD 10, AD 11, AD 12: A*9, A*10, A*11, A*12.

2. In the case of officials recruited from lists of suitable candidates resulting from competitions published before 1 May 2004 Article 5(3) of the Staff Regulations shall not apply.

3. Officials who have been included in a list of suitable candidates before 1 May 2006 and are recruited between 1 May 2004 and 30 April 2006 shall:

- if the list was drawn up for category A*, B* or C*, be graded in the grade published in the competition,

- if the list was drawn up for category A, LA, B or C, be graded in accordance with the following table:

Grade of the competition	Grade of recruitment
A8/LA8	A*5
A7/LA7 and A6/LA6	A*6
A5/LA5 and A4/LA4	A*9
A3/LA3	A*12
A2	A*14
A1	A*15
B5 and B4	B*3
B3 and B2	B*4
C5 and C4	C*1
C3 and C2	C*2'

Facts

- 9 The Commission published in the *Official Journal of the European Communities*, during the period between 11 April 2001 and 18 June 2002, a number of notices of open competitions to constitute reserves of Administrators in career bracket A7/A6 (COM/A/6/01, COM/A/9/01, COM/A/10/01, COM/A/1/02, COM/A/3/02 and CC/A/12/02), Assistant Administrators in career bracket A8 (competition COM/A/2/02) and Administrative Assistants in career bracket B5/B4 (competition COM/B/1/02).

- 10 The 17 applicants were included before 1 May 2004 on the various lists of suitable candidates drawn up following the selection tests.

- 11 Under the section headed 'Recruitment', the competition notices stated that if successful candidates were placed on a reserve list they would be eligible for appointment, as required.

- 12 At the end of point D ('General Information') of the notices of open competitions COM/A/1/02 and COM/A/2/02, the following note appeared:

'The Commission has formally transmitted to the Council a proposal to amend the Staff Regulations. This proposal contains, inter alia, a new career system. The successful candidates in this competition could, therefore, be offered a post on the basis of new Staff Regulations, if they have been adopted by the Council.'

- 13 The notice of competition COM/A/3/02 contained an almost identical note which referred to 'the provisions of the new Staff Regulations'.
- 14 The lists of suitable candidates drawn up following competitions COM/A/6/01, COM/A/9/01 and COM/A/10/01 ('the 2001 competitions') were published in the *Official Journal of the European Communities* on, respectively, 19 November 2002 (competition COM/A/6/01), 8 March (competition COM/A/10/01) and 2 July 2003 (competition COM/A/9/01).
- 15 The letters informing the successful candidates in the 2001 competitions of their inclusion on the list of suitable candidates stated inter alia that the validity of that list was due to expire on 31 December 2003.
- 16 In December 2003, the Commission's Directorate-General for Personnel and Administration sent a letter to each of the successful candidates in the 2001 competitions, informing them that the validity of the various lists of suitable candidates was being extended until 31 December 2004.
- 17 The lists of suitable candidates drawn up following competitions COM/A/1/02, COM/A/2/02, COM/A/3/02, COM/B/1/02 and CC/A/12/02 ('the 2002 competitions') were published in the *Official Journal of the European Communities* on, respectively, 19 December 2003 (competition CC/A/12/02), 23 March (competitions COM/A/1/02 and COM/A/2/02) and 18 May 2004 (competitions COM/A/3/02 and COM/B/1/02).
- 18 The applicants were appointed probationary officials by decisions adopted after 1 May 2004 ('the contested decisions') and taking effect by a date between that date and 1 December 2004.

- 19 By the contested decisions, the applicants were graded in accordance with Article 12(3) of Annex XIII to the Staff Regulations, that is to say, in grade B*3 (competition COM/B/1/02), grade A*5 (competition COM/A/2/02) or grade A*6 (all other competitions).
- 20 All the applicants lodged, between 6 August 2004 and 21 October 2004, complaints under Article 90(2) of the Staff Regulations against the decisions appointing them probationary officials in so far as those decisions fixed their classification, in accordance with Article 12(3) of Annex XIII to the Staff Regulations, at grades less favourable than those set out in the various competition notices.
- 21 By decisions taken between 21 October 2004 and 22 December 2004, the appointing authority rejected the complaints lodged by the applicants.

Procedure and forms of order sought by the parties

- 22 By application lodged at the Registry of the Court of First Instance on 3 February 2005, the applicants brought the present action.
- 23 By order of 6 June 2005 of the President of the Fourth Chamber of the Court of First Instance, the Council was granted leave to intervene in support of the forms of order sought by the Commission.
- 24 By decision of 6 October 2006, the Court decided to refer the case to the Fourth Chamber, Extended Composition.

25 The applicants claim that the Court should:

- annul the contested decisions in so far as they fix their classification in grade in accordance with Article 12(3) of Annex XIII to the Staff Regulations;
- reconstitute their careers (including recognition of their experience in the grade thus amended, their rights to promotion and their pension entitlement), starting from the grade at which they should have been appointed as stated in the notice of the competition following which they were placed on the list of suitable candidates, either at the grade mentioned in that competition notice or at that corresponding to its equivalent according to the classification established by the rules laid down in the new Staff Regulations (and at the appropriate step in accordance with the rules applicable before 1 May 2004), as from the appointment decision;
- award them default interest, calculated on the basis of the rate fixed by the European Central Bank, payable in respect of all sums corresponding to the difference between the salary corresponding to their classification shown in the appointment decision and the classification to which they should have been entitled, up to the date of the decision properly classifying them in grade;
- order the Commission to pay the entire costs.

26 The Commission, supported by the Council, contends that the Court should:

- dismiss the action as unfounded;

— make an appropriate order as to costs.

Law

²⁷ In support of their claims for annulment, the applicants put forward, firstly, a plea of illegality of Article 12(3) of Annex XIII to the Staff Regulations, on the basis of which the Commission determined their classification in grade in the contested decisions.

²⁸ Secondly, the applicants claim that the contested decisions themselves infringe the principle of good administration, the principle that an institution is to have regard for the welfare of its officials, the principles of the protection of transparency, of the protection of legitimate expectations, of good faith, of equal treatment and non-discrimination, and the rule of equivalence of post and grade.

Illegality of Article 12(3) of Annex XIII to the Staff Regulations

²⁹ The applicants maintain that Article 12(3) of Annex XIII to the Staff Regulations is contrary to Article 10 of the old Staff Regulations, infringes their acquired rights, breaches the principles of legal certainty and non-retroactivity and the principles of equal treatment and non-discrimination, infringes their legitimate expectations and contravenes both Article 31 of the Staff Regulations and Articles 5 and 7 thereof.

Infringement of Article 10 of the old Staff Regulations

— Arguments of the parties

- 30 The applicants complain that the Commission failed to consult the Staff Regulations Committee on an amendment made to the Proposal for a regulation amending the old Staff Regulations and aimed at appointing successful candidates in competitions of which the notice specified the grade of recruitment A7 or A6, not at grade A*7, as provided for in the text previously submitted to the Staff Regulations Committee, but at the lower grade A*6.
- 31 That amendment, inserted in the provision which became Article 12(3) of Annex XIII to the Staff Regulations, is not, contrary to what the Commission maintains, marginal, non-substantial or gradual and non-structural, since it entails a considerable reduction in the applicants' pecuniary rights and career prospects.
- 32 By failing to consult the Staff Regulations Committee on that fundamental amendment to the Staff Regulations, the Commission thus infringed the second paragraph of Article 10 of the old Staff Regulations.
- 33 The Commission objects that a further consultation of the Staff Regulations Committee is required only when the proposal on which that body has expressed an opinion has been amended to the extent that its very substance has been affected.

34 However, the amendment consisting in substituting the grade A*6 for the grade A*7 is not substantial in character since its scope is very limited and it must be borne in mind that the new career structure is based on a more sustained promotion rate than the old structure.

— Findings of the Court

35 Under the second sentence of the second paragraph of Article 10 of the old Staff Regulations, the Staff Regulations Committee is to be consulted by the Commission on any proposal for revision of the Staff Regulations. That provision imposes on the Commission a consultation obligation which extends not only to formal proposals but also to the introduction by it of substantial amendments to proposals which have already been considered, unless, in the latter case, the amendments correspond, in essence, to those proposed by the Staff Regulations Committee.

36 That interpretation is dictated both by the wording of the provision in question and by the role assumed by the Staff Regulations Committee. First, by providing for consultation without reservation or exception on any proposal for revision of the Staff Regulations, that provision attaches a wide scope to the obligation laid down by it. Its terms are therefore manifestly irreconcilable with a narrow interpretation of its scope. Second, the Staff Regulations Committee, as a joint body composed both of representatives of the administrative authorities and of democratically elected representatives of the staff of all the institutions, is called upon to take into consideration and express the interests of the Community civil service as a whole (Case T-164/97 *Busacca and Others v Court of Auditors* [1998] ECR-SC I-A-565 and II-1699, paragraphs 91 to 95).

- 37 It follows that, when amendments to a proposal for revision of the Staff Regulations are introduced during the negotiation of the text before the Council, there is an obligation to re-consult the Staff Regulations Committee before the legislative provisions concerned are adopted by the Council, if those amendments substantially affect the tenor of the proposal. Specific amendments of limited effect do not entail such an obligation which would, on the contrary interpretation, have the effect of excessively restricting the right of amendment in the context of the Community legislative process.
- 38 The character, be it substantial or specific and limited, of the amendments in question must therefore be assessed from the point of view of their subject-matter and the position of the amended provisions within the whole body of enacting terms proposed for adoption, and not of that of the individual consequences which they may have for the situation of persons likely to be affected by their implementation.
- 39 In this instance, the restructuring of the grades of classification and pay scale of officials of the European Communities arising from the reform of career brackets introduced by the Community legislature had the immediate consequential effect of lowering the grades of recruitment for new officials, accompanied in due course by an expansion of their career prospects.
- 40 It follows that the substitution of the grade A*6 for the grade A*7 initially envisaged constitutes an additional element of the reform, which fits into the broad logic and overall perspective of a progressive restructuring of career structures.
- 41 That substitution amounts to a specific adaptation of the transitional provisions leading towards the new career structure, neither the general tenor nor the

substance itself of which thus appear to be affected by that adaptation, to the extent that it would justify re-consultation of the Staff Regulations Committee (see, to that effect, Case C-280/93 *Germany v Council* [1994] ECR I-4973, paragraph 41).

42 It is therefore not apparent that, by not re-consulting the Staff Regulations Committee on a simple addition brought about by the general scheme of the proposal for amendment of the Staff Regulations, as it had previously been submitted to the Staff Regulations Committee, the Commission infringed the second sentence of the second paragraph of Article 10 of the old Staff Regulations, even though the substitution of grade A*6 for grade A*7, inserted after the Staff Regulations Committee had been consulted, did immediately have a significant financial effect on the level of the initial classification of the officials concerned and on the salary paid to them at the start of their careers.

43 The plea must therefore be rejected as unfounded.

Infringement of the applicants' acquired rights and breach of the principles of legal certainty and non-retroactivity

— Arguments of the parties

44 The applicants submit that their right to be classified at the grade referred to in the notices of the competitions in question, which are binding on the appointing authority and place it under obligation to them, stems from their inclusion on a list of suitable candidates. By fixing their classification at a different grade of recruitment, Article 12(3) of Annex XIII to the Staff Regulations therefore infringes their acquired rights

45 That provision is also contrary to the principle of non-retroactivity in so far as it alters, by the insertion of new criteria for classification, the situation which the applicants were entitled to expect in the light of the statements contained in the competition notices.

46 Finally, the contested provision infringes the principle of legal certainty, pursuant to which citizens must be able to rely on the conditions laid down by competition notices. Those conditions remain valid so long as the persons concerned have not received, in due time, clear, complete and precise information on new provisions applicable to their classification in grade on recruitment.

47 The Commission, supported by the Council, submits that the contested provision is not contrary to the principles invoked by the applicants. It argues in essence that inclusion on a list of suitable candidates confers mere eligibility, and no right, to be appointed a probationary official and, *a fortiori*, does not confer any right to be classified in a particular grade in the event of appointment. There can therefore be no question of any acquired rights being affected, since the emergence of a legal situation prior to a legislative amendment is a necessary, but not sufficient, condition for the establishment of an acquired right.

— Findings of the Court

48 It is established that Regulation No 723/2004, which inserts Article 12(3) of Annex XIII to the Staff Regulations into the text of the Staff Regulations, entered into force on 1 May 2004, that is, on a date subsequent to that of its publication, 27 April 2004.

- 49 Since the date on which it took effect does not precede the date of its publication, Regulation No 723/2004 cannot be held to be retroactive (see, to that effect, Case T-177/95 *Barraux and Others v Commission* [1996] ECR-SC I-A-541 and II-1451, paragraphs 45 and 46).
- 50 In so far as it lays down new criteria for classification in grade which are applicable upon the recruitment of successful candidates in competitions who are included on lists of suitable candidates before 1 May 2004 but appointed probationary officials after that date, Article 12(3) of Annex XIII to the Staff Regulations is therefore not contrary to the principle of non-retroactivity.
- 51 According to settled case-law, it is well established that, in the event of amendment of provisions of general application and, in particular, of the provisions of the Staff Regulations, a new rule applies immediately to the future effects of legal situations which arose, but were not fully constituted, under the previous rule (Case 68/69 *Brock* [1970] ECR 171, paragraph 7; Case 143/73 *SOPAD* [1973] ECR 1433, paragraph 8; and Case 270/84 *Licata v ESC* [1986] ECR 2305, paragraph 31).
- 52 In this case, Article 12(3) of Annex XIII to the Staff Regulations was not capable of infringing any right which may have been held by the applicants to the application of the criteria for classification under the old Staff Regulations. The inclusion of successful candidates in open competitions on the lists of suitable candidates drawn up as a result of selection processes merely renders those concerned eligible to be appointed probationary officials, as was pointed out, moreover, by the notices of the open competitions in question (see, to that effect, Case T-173/99 *Elkaïm and Mazuel v Commission* [2000] ECR-SC I-A-101 and II-433, paragraph 21).

- 53 That eligibility is necessarily to the exclusion of any acquired right, since the classification in grade of a successful candidate included on the list of suitable candidates in an open competition cannot be regarded as acquired so long as he has not been the subject of an appointment decision in good and due form.
- 54 As is clear from Article 3 of the Staff Regulations, the appointment of an official necessarily has its origin in a unilateral instrument of the appointing authority stating the date on which the appointment takes effect and the post to which the official is appointed (Case T-40/91 *Ventura v Parliament* [1992] ECR II-1697, paragraph 41).
- 55 Consequently, it is only after being the subject of such a decision that a successful candidate in an open competition can claim the status of official and therefore demand the application to him of provisions of the Staff Regulations (Case T-74/98 *Mammarella v Commission* [1999] ECR-SC I-A-151 and II-797, paragraph 27).
- 56 However, on 1 May 2004, the date of the entry into force of Article 12(3) of Annex XIII to the Staff Regulations, the applicants had not yet been declared eligible, by an instrument of appointment of the appointing authority, for the application to them of provisions of the Staff Regulations.
- 57 The applicants are therefore not justified in alleging that Article 12(3) of Annex XIII to the Staff Regulations infringed rights to classification in the grades of the former career brackets set out in the competition notices in question, which they acquired, before 1 May 2004, by virtue of their inclusion on the lists of suitable candidates drawn up following the selection processes.

58 An official cannot claim an acquired right unless the facts giving rise to that right arose by virtue of a particular status prior to the amendment of the provisions of the Staff Regulations (Case 28/74 *Gillet v Commission* [1975] ECR 463, paragraph 5).

59 It follows that no acquired right of the applicants to a particular classification in grade has been infringed in this case.

60 Finally, the principle of legal certainty invoked by the parties concerned applies to situations of the type at issue here only where a Community legislative measure takes effect from a point in time before its publication (Case C-337/88 *SAFA* [1990] ECR I-1, paragraph 13), and where Community rules apply to situations existing before their entry into force (Case 21/81 *Bout* [1982] ECR 381, paragraph 13), assumptions which are not relevant to this case, as has been established above.

61 It follows that the principle of legal certainty cannot have been infringed by the Community legislature.

62 The applicants are therefore not justified in maintaining that the provision contested by means of a plea of illegality infringes their acquired rights or the principles of legal certainty and non-retroactivity.

63 The claim must therefore be rejected as unfounded.

Breach of the principle of equal treatment and non-discrimination

— Arguments of the parties

- 64 Without disputing the right of the legislature to amend the provisions of the Staff Regulations, the applicants maintain that Article 12(3) of Annex XIII to the Staff Regulations treats differently an identical category of persons, consisting of successful candidates in the same competition, with regard to their classification in grade and, consequently, their monthly salary, depending on whether they were recruited before 1 May 2004 or from that date onwards.
- 65 That date cannot be regarded, for the purposes of classification in grade on recruitment, as an objective distinguishing criterion, since the date of appointment of an official depends on factors which are not objective and over which the applicants have no control.
- 66 The only objective criterion to be taken into account in that regard is the date, earlier than 1 May 2004, of the letter informing all the successful candidates in the competitions of their inclusion on the list of suitable candidates. Even though they had no right to be appointed, they had from then on, in the event of appointment, the right to be recruited at the grade mentioned in the vacancy notice and the competition notice, and in accordance with Article 31 of the old Staff Regulations.
- 67 In Case T-92/96 *Monaco v Parliament* [1997] ECR-SC I-A-195 and II-573, the Court held, firstly, that it is not necessary to take into account the date of a candidate's recruitment in order to determine the provisions applicable to him and, secondly, that observance of the principle of non-discrimination and equal treatment requires

that all the successful candidates in a competition be treated identically, irrespective of any new rules which may be adopted before some of those candidates are appointed.

68 Another discriminating factor arises from the fact that the downgrading of their classification has the effect of assigning to all the applicants 'senior' posts with 'junior' grades. In so far as they had already acquired considerable professional experience and were in possession of significant qualifications and diplomas, they were subject, in breach of Article 1d of the Staff Regulations, to discrimination based on their age, since they do not have the same career prospects as other, younger officials benefiting from the same classification.

69 Furthermore, since some of the applicants had, before their appointment as probationary officials, the status of members of the temporary staff or the auxiliary staff of the European Communities, they were assigned, under the new rules laid down in the Staff Regulations, the same posts with the same duties, or even increased duties, whereas, on the other hand, their classification in grade was lowered.

70 The Commission submits, on the contrary, that the successful candidates in the competitions at issue, who were appointed before 1 May 2004 and from that date onwards respectively, are not in a comparable situation.

71 As follows by implication from Article 3 in conjunction with the first paragraph of Article 4 of the Staff Regulations, the relevant date for the purpose of determining whether an instrument appointing an official is legal is that on which it takes effect. However, both the dates on which the contested decisions were adopted and those on which they took effect were later than 1 May 2004.

- 72 Since the lawfulness of a Community measure must be assessed on the basis of the facts and law existing on the date of its adoption, the successful candidates in the competitions at issue who were appointed before 1 May 2004 were eligible to be appointed officials in accordance with the provisions of Articles 31 and 32 of the old Staff Regulations, whereas, following the entry into force of Regulation No 723/2004, the successful candidates in the competitions at issue who were appointed after that date were eligible to be appointed officials in accordance with the transitional provisions of Article 12(3) of Annex XIII to the Staff Regulations.
- 73 Unlike *Monaco v Parliament*, these proceedings relate neither to the administrative practice of an institution concerning the classification in grade of the officials recruited by it nor to an internal directive laying down such an administrative practice, but to a provision which is enacted by the Community legislature and which does not entail the risk of arbitrariness inherent in an ad hoc amendment made by an institution to an internal directive relating to classification in grade on recruitment.
- 74 The Community legislature is at any time entitled to adopt, for the future, any amendments to the provisions of the Staff Regulations which it considers to be consistent with the interests of the service, even if such amendments result in a situation less favourable to officials than that which resulted from the former provisions.

— Findings of the Court

- 75 According to settled case-law, the general principle of equal treatment and non-discrimination requires that comparable situations are not treated differently unless differentiation is objectively justified (Case T-109/92 *Lacruz Bassols v Court of Justice* [1994] ECR-SC I-A-31 and II-105, paragraph 87).

- 76 In order to determine whether the applicants can properly rely on that principle, it must therefore be determined whether all the successful candidates in the competitions in question who were included on the lists of suitable candidates drawn up following the selection processes must be regarded as falling within a single category of persons, whether they were appointed before 1 May 2004 or from that date onwards.
- 77 As is apparent from the arguments set out above, the classification in grade of the applicants could be lawfully carried out only in accordance with the new criteria in force on the date of the adoption of the decision appointing them probationary officials.
- 78 The applicants do in fact implicitly acknowledge that the new provisions of the Staff Regulations are indeed applicable to them, in so far as they claim that they should benefit from the application of Article 1d of the Staff Regulations.
- 79 By contrast, the successful candidates in the competitions in question who were appointed prior to 1 May 2004 were bound to be classified in grade on the basis of the old criteria still in force on the date of their appointment but abolished since that date by virtue of the entry into force of the new provisions of the Staff Regulations.
- 80 It follows that the applicants cannot be regarded as falling within the same category of persons as the successful candidates in the competitions in question who were recruited prior to 1 May 2004.
- 81 The applicants cannot therefore properly maintain that their inclusion on the list of suitable candidates prior to 1 May 2004 conferred on them a right to be appointed,

in the event of recruitment, at the grade mentioned in the vacancy notice or in the competition notice, or at the corresponding grade under Article 2(1) of Annex XIII to the Staff Regulations, and in accordance with Article 31 of the old Staff Regulations.

82 As long as their appointment remained hypothetical, they did not have capacity to rely on classification criteria under the Staff Regulations which are applicable upon the recruitment of successful candidates in open competitions.

83 Indeed, by specifying that the transitional provisions of the Staff Regulations should respect the acquired rights of the staff in the framework of the Community system before the entering into force of the new body of rules governing the Community civil service, recital 37 in the preamble to Regulation No 723/2004 confirms the distinction which must be made between the successful candidates in the competitions at issue who were appointed before and those who were appointed from 1 May 2004 onwards.

84 The idea that all the officials recruited by an institution from the same competition are in comparable situations was advanced in paragraph 55 of the judgment in *Monaco v Parliament* only for the purpose of establishing the illegality of applying to a successful candidate in an open competition stricter internal directives on classification in grade adopted by the employer institution itself after the inclusion of the person concerned on the list of suitable candidates, with a view to applying classification criteria under the Staff Regulations which had remained unchanged.

85 In this instance, and in any event, it was, on the contrary, the Community legislature which, in exercising a right of which the applicants themselves state that they do not dispute the existence, chose to amend the criteria in the Staff Regulations for the classification in grade of new officials on their recruitment.

- 86 According to settled case-law, the legislature is entitled at any time to make, for the future, such amendments to the Staff Regulations as it considers to be consistent with the interests of the service, even if those amendments are, as in this case, less favourable (Case T-121/97 *Ryan v Court of Auditors* [1998] ECR II-3885, paragraph 98).
- 87 Since the post to which the official is appointed is itself also determined by the appointment decision (*Ventura v Parliament*, paragraph 41) and that decision may be based only on the provisions applicable on the date of its adoption, nor can it be regarded as discriminatory to assign to certain applicants, under the new rules in the Staff Regulations, a lower classification in grade, even though they are now being appointed to the same post as that which they had held before 1 May 2004 as non-established members of staff and are performing duties identical to, or even more important than, those they performed in the past.
- 88 Finally, the argument based on the alleged downgrading of the applicants' classification, resulting in their appointment to 'senior' posts classified in 'junior' grades and in the absence of career prospects, which are by contrast available to other, younger officials benefiting from the same classification, must be rejected.
- 89 Apart from the fact that it cannot be characterised, contrary to what the applicants maintain, as discrimination based on age within the meaning of Article 1d of the Staff Regulations, since the new criteria for classification in grade are manifestly unconnected with any taking into account of the age of the persons concerned, such a circumstance cannot be regarded as a breach of the principle of equal treatment and non-discrimination for the reasons set out above.

90 It follows that Article 12(3) of Annex XIII to the Staff Regulations is not contrary to the principle of equal treatment and non-discrimination.

91 In those circumstances, the claim cannot succeed.

Breach of the principle of the protection of legitimate expectations

— Arguments of the parties

92 The applicants maintain that Article 12(3) of Annex XIII to the Staff Regulations breaches the principle of the protection of legitimate expectations in so far as they were justified in expecting to benefit, after their success in the competitions in question, from treatment in accordance with the conditions laid down in the competition notices.

93 New rules can apply to the future effects of a situation which arose under previous provisions only provided that they do not alter substantially situations established under the old Staff Regulations, are foreseeable and justified by an overriding public interest.

94 The Commission replies in essence that the applicants were not justified in entertaining legitimate expectations of a classification in the grade set out in the competition notices.

— Findings of the Court

- 95 It is sufficient to recall that an official cannot rely on the principle of the protection of legitimate expectations in order to challenge the lawfulness of a new regulation, particularly in a field in which the legislature has, as in this case, a wide discretion, the principle of which the applicants have in no way disputed, as to the need for reforms to the Staff Regulations (see, to that effect, Case T-30/02 *Leonhardt v Parliament* [2003] ECR-SC I-A-41 and II-265, paragraph 55).
- 96 Moreover, the right to rely on the principle of the protection of legitimate expectations extends to any individual who is in a situation in which it is apparent that the Community administration has led him to entertain justified expectations by giving him precise assurances in the form of precise, unconditional and consistent information coming from authorised and reliable sources.
- 97 However, a person may not plead breach of that principle unless he has been given precise assurances by the administration (Case T-273/01 *Innova Privat-Akademie v Commission* [2003] ECR II-1093, paragraph 26).
- 98 However, the fact remains that the file does not contain any document which would enable the applicants to conclude that the Community institutions gave them any assurances capable of giving rise to a legitimate expectation of the maintenance of the old criteria of the Staff Regulations for the classification in grade of officials on their recruitment. Competition notices and correspondence from the Commission even pointed out that the successful candidates in the competitions could be offered recruitment on the basis of new provisions of the Staff Regulations.

99 Finally, the applicants cannot properly rely on a substantial change in a situation established under the old Staff Regulations since, as has been stated above, the inclusion of the applicants on a list of suitable candidates could not have the effect of entitling them to benefit from such a situation.

100 In those circumstances, the claim cannot be allowed.

Inconsistency of Article 12(3) of Annex XIII to the Staff Regulations with Article 31(1) of the Staff Regulations

— Arguments of the parties

101 The applicants claim that Article 12(3) of Annex XIII to the Staff Regulations is inconsistent with Article 31(1) of the Staff Regulations, under which an official is to be recruited at the grade set out in the notice of the competition he has passed. Although it refers to the new concept of 'function group', the latter provision applies to all competitions, including those held before 1 May 2004 and in which the successful candidates were included on a list of suitable candidates before that date.

102 The administration cannot derogate unilaterally from the competition notice of which it is the author and by which it is bound in all its elements, since its main purpose is to inform interested persons as accurately as possible of the importance of the posts to be filled and of the qualifications for appointment to them.

- 103 Even though the competition notices in question did not contain any reference to the date of 1 May 2004 and did not provide for any future alteration of the classification in grade of the successful candidates on their recruitment, all the applicants were classified, in accordance with Article 12(3) of Annex XIII to the Staff Regulations, in a grade lower than that mentioned in the competition notices and those former grades had not been correctly converted in relation to the new intermediate grades defined by Article 2(1) of Annex XIII to the Staff Regulations.
- 104 The Commission observes that the applicants are in actual fact criticising the fact that they were not appointed to the grade set out in the competition notices, in accordance with Article 31 of the Staff Regulations.
- 105 In the Commission's view, as a transitional legal rule, Article 12(3) of Annex XIII to the Staff Regulations cannot infringe Article 31 of the Staff Regulations, with respect to which it is *lex specialis*, without there being any need to state expressly that it derogates from the latter.
- 106 As a result of the entry into force of the new provisions of the Staff Regulations, the former grades were replaced by new grades: Article 8(1) of Annex XIII to the Staff Regulations refers to 'the grades introduced by Article 2(1)' and the tables in Article 2(2) and (3) of that annex use the phrase 'new intermediate grades'.
- 107 It follows that the competition notices published before 1 May 2004 became devoid of purpose in so far as they referred to recruitment at a particular grade, *a fortiori* since the competitions at issue related to a particular career bracket (two grades) in accordance with Article 5 of the old Staff Regulations. As from that date, it is no longer appropriate to refer to 'career brackets', since any mention of that concept

has disappeared from Article 5 of the Staff Regulations. The legislature therefore had to fill that gap by adopting 'transitional grading rules', that is to say by itself determining the (new) classification in grade of an official recruited following a competition the notice of which had been published before 1 May 2004. Article 12(3) of Annex XIII to the Staff Regulations is precisely such a 'transitional grading rule'.

— Findings of the Court

¹⁰⁸ Article 31(1) of the Staff Regulations provides that the successful candidates in a competition are to be appointed to the grade of the function group set out in the notice of the competition they have passed.

¹⁰⁹ Although it is necessarily to be inferred from that new provision that successful candidates in open competitions must be appointed probationary officials at the grade set out in the notice of the competition as a result of which they have been recruited, it nevertheless follows from the reply given to the claim alleging breach of the principle of equal treatment and non-discrimination that the determination of the importance of the posts to be filled and of the conditions for the appointment of the successful candidates to those posts, which the Commission had carried out under the provisions of the old Staff Regulations when it drew up the competition notices at issue, could not extend its effects beyond the date of 1 May 2004 adopted by the Community legislature for the entry into force of the new career structure for officials of the European Communities.

¹¹⁰ The abolition, as from 1 May 2004, of the grades of classification in the career brackets set out in the notices of the competitions, which results from the introduction of the new careers system, prompted the legislature to adopt the transitional provisions of Annex XIII to the Staff Regulations and in particular

Article 12(3), for the purpose of determining the classification in grade of successful candidates in competitions who were included on lists of suitable candidates before 1 May 2004 but were appointed probationary officials on or after that date.

111 To that end, the legislature substituted the intermediate grades B*3, A*5 and A*6 provided for by Article 12(3) of Annex XIII to the Staff Regulations for the career bracket grades B5/B4, A8 and A7/A6 corresponding, respectively, to the former career brackets for administrative assistants, assistant administrators and administrators, which appeared in the competition notices in question but were abolished as from 1 May 2004.

112 It is true that the table in Article 12(3) of Annex XIII to the Staff Regulations, which transposes the grades set out in the competition notices into intermediate grades of recruitment, differs from the table in Article 2(1) of that annex, in which the former grades of officials in post prior to 1 May 2004 are converted into new intermediate grades.

113 As pointed out above, it is however open to the legislature to adopt, for the future, in the interests of the service, amendments to the provisions of the Staff Regulations, even if the amended provisions are less favourable than the former provisions (*Ryan v Court of Auditors*, paragraph 98).

114 By its very nature, a transitional provision such as that at issue here derogates from certain rules of the Staff Regulations whose application is necessarily affected by the change of system. In this case, the derogation does not go beyond that which follows from the appointment as officials, under the new rules of the Staff Regulations, of persons selected by competition procedures initiated and concluded under the old provisions.

115 In those circumstances, the applicants cannot properly claim, in order to demonstrate that Article 12(3) of Annex XIII to the Staff Regulations is inconsistent with Article 31(1) of the Staff Regulations, that they were classified in a lower grade than that mentioned in the competition notices or on the basis of a table of equivalence of grades which differs from the relationship established between the old and the new classification in grade of officials.

116 It follows that the claim cannot be accepted.

Infringement of Articles 5 and 7 of the Staff Regulations

— Arguments of the parties

117 The applicants allege infringement of Article 5(5) of the Staff Regulations which makes identical conditions of recruitment and service career applicable to all officials belonging to the same function group. Whereas the successful candidates in the competitions at issue who were appointed officials before 1 May 2004 benefited from the classification and remuneration corresponding to the grade mentioned in the competition notices, the classification of the applicants was made on the basis of Article 12 of Annex XIII to the Staff Regulations.

118 Article 5(1) and (4) of the Staff Regulations were also infringed since, as a result of the 'automatic' application of Article 12(3) of Annex XIII to the Staff Regulations, their posts were not subjected to a 'reclassification' on the basis of the nature and importance of the duties to which they relate in each basic post.

- 119 Article 12(3) of Annex XIII to the Staff Regulations also infringes Article 5(3) of the Staff Regulations, as implemented by Annex I, point A, thereto, relating to basic posts and corresponding career brackets, in so far as it had the effect of reclassifying the applicants' posts at a level below the duties relating to those posts.
- 120 Finally, the principle of equivalence of post and grade, the guarantee of equal treatment for officials, laid down by Article 7(1) of the Staff Regulations, was also infringed.
- 121 The Commission objects that it is not the task of the Community legislature, but exclusively that of the institutions responsible for applying the Staff Regulations, in accordance with Article 5(4) of those regulations, to define the duties attaching to each type of post and to observe equivalence of posts whenever they decide on the assignment of their staff.
- 122 The reference made by the applicants to the table in Annex I, point A, to the Staff Regulations is not permissible in so far as, pursuant to Article 4(n) of Annex XIII to the Staff Regulations, Annex XIII.1, relating to types of posts during the transitional period, replaces Annex I, point A, from 1 May 2004 to 30 April 2006.
- 123 Finally, Article 5(1) is purely declaratory and does not lay down any independent obligations for the institutions.

— Findings of the Court

- 124 As is to be inferred from the reply given above to the claim alleging breach of the principle of equal treatment and non-discrimination, it cannot properly be maintained that Article 5(5) of the Staff Regulations was infringed as a result of the classification of the successful candidates in the competitions in question who were recruited before 1 May 2004 in the grade mentioned in the competition notices, whereas the applicants were classified in accordance with the criteria laid down by Article 12(3) of Annex XIII to the Staff Regulations.
- 125 The Court of First Instance points out in that regard that, at the time of the appointment of the successful candidates in the competitions in question before 1 May 2004, the provisions of the old Staff Regulations and the grades of classification set out in the competition notices were applicable, whereas the classification in grade of the applicants was covered by the new provisions in force since that date, including the transitional provisions of Article 12(3) of Annex XIII to the Staff Regulations.
- 126 The applicants are also wrong in maintaining that Article 12 of Annex XIII to the Staff Regulations is contrary to Article 5 of the Staff Regulations. In adopting that first-mentioned provision, the legislature defined the grades of classification of officials recruited during the transitional period, in exercise of its power to amend the provisions of the Staff Regulations.
- 127 Article 12 of Annex XIII to the Staff Regulations states, in paragraph 2, that the provisions of Article 5(3) of the Staff Regulations, which define the level of the qualifications required for appointments to the posts covered by the new career structure, do not apply to officials recruited, as the applicants were, from lists of suitable candidates resulting from competitions published before 1 May 2004.

128 In that regard, Article 4(n) of Annex XIII to the Staff Regulations specifies that Annex I, point A, entitled ‘Types of posts in each function group, as provided for in Article 5(3)’ and including the table showing the new types of posts, to which Article 5(4) of the Staff Regulations refers, is replaced by Annex XIII.1 to the Staff Regulations, setting out the types of posts during the transitional period.

129 Article 12(3) and Article 4(n) of Annex XIII to the Staff Regulations thus prevail over the general provisions of Article 5 of the Staff Regulations by derogating from them as special legislation (see, to that effect, Case C-444/00 *Mayer Parry Recycling* [2003] ECR I-6163, paragraph 57, and Case T-371/03 *Le Voci v Council* [2005] ECR-SC I-A-209 and II-957, paragraph 122).

130 Nor can the applicants plead infringement of Article 7(1) of the Staff Regulations, under which each official must be appointed to a post in his function group which corresponds to his grade.

131 That provision also must, of course, be understood as meaning that it is without prejudice to the application on a transitional basis, from 1 May 2004 to 30 April 2006, of Article 12(3) of Annex XIII to the Staff Regulations and its accompanying provisions.

132 In those circumstances, the claim cannot succeed.

133 It follows from the foregoing that the plea of illegality concerning Article 12(3) of Annex XIII to the Staff Regulations must be rejected in its entirety.

Incompatibility of the contested decisions with the general principles of good administration, transparency, the protection of legitimate expectations, equal treatment and non-discrimination, equivalence of post and grade, good faith and the principle that an institution is to have regard for the welfare of its officials

Arguments of the parties

- 134 The applicants submit, first of all, that the contested decisions are contrary to the principle of good administration and the rule of transparency in so far they were not informed precisely and clearly of the fundamental alteration which was to be made to their classification in grade in the event of their being appointed after 1 May 2004.
- 135 All the applicants officially became aware of their classification in grade in accordance with the provisions of the Staff Regulations only after that date. In addition, the contested decisions expressly refer only to Article 31 of the Staff Regulations, to the vacancy notice and to the competition notice and do not refer to Article 12 of Annex XIII to the Staff Regulations.
- 136 The publication of Regulation No 723/2004 three days before its entry into force and, in the majority of cases, after the offers of employment had been sent to the applicants, cannot be considered satisfactory in the light of the complexity and abstruseness of the text in question, acknowledged by the Commission itself.
- 137 If the applicants had been clearly informed, in good time, of the effect which the new regulations would have on their classification in grade in the event of recruitment

after 1 May 2004, they could, at least in some cases, have tried to be recruited before that date, or even refused to be appointed under those new, detrimental conditions.

138 The applicants also maintain that the contested decisions were taken in breach of the principle of the protection of legitimate expectations. Certain applicants had contact, during recruitment interviews prior to 1 May 2004, with senior staff of the administration who confirmed to them, in some cases on several occasions, a classification in the grade corresponding to that mentioned in the competition notice. References are also made to texts and documents published in the *Official Journal of the European Union* and on the Commission's Internet site, as well as to official letters inviting them to undergo medical examinations and take part in administrative interviews.

139 The applicants further complain that the appointing authority did not adopt the same conduct towards all the successful candidates in the competition, in breach of the principle of non-discrimination. For certain reasons, some of the successful candidates in the competitions in question were able to be recruited before 1 May 2004 and others were not.

140 Moreover, the Commission infringed the principle of equivalence of post and grade by not carrying out an assessment of the applicants' duties and responsibilities in relation to the grade which they should have been assigned.

141 It is therefore legitimate to enquire whether the appointing authority genuinely acted in good faith and in accordance with the principle that an institution should have regard for the welfare of its officials, even though it was itself able to measure the — unacceptable — consequences of appointing to different grades successful

candidates in the same competition, who were entitled to rely on the classification in grade set out in the competition notice and who were not informed of the detrimental effects of the Staff Regulations on their future classification in the event that their recruitment took place after 1 May 2004.

¹⁴² The Commission replies that the applicants were sufficiently informed. Regulation No 723/2004 was published prior to the adoption of the contested decisions and even, in some cases, before the applicants accepted the offer of employment which was made to them. Furthermore, the reform of the careers system had been announced in the competition notices or in the letters informing the applicants of the extension of the lists of suitable candidates.

¹⁴³ Contrary to what the applicants seem to consider, the institutions are not required, by virtue of a general obligation, to draw the attention of their future officials, prior to their appointment, to all aspects of their legal position.

¹⁴⁴ The offers of employment sent to the applicants clearly informed them that their classification in grade would be made in accordance with Article 12(3) of Annex XIII to the Staff Regulations. Those letters also referred to an Internet site on which further information could be found.

¹⁴⁵ It is by no means demonstrated that the administration gave the applicants precise, unconditional and consistent assurances to the effect that their classification in grade would be made in accordance with the provisions of the old Staff Regulations. Moreover, legitimate expectations can arise only from assurances which are consistent with the applicable legal rules. Since Article 12(3) of Annex XIII to the Staff Regulations is binding and does not confer any discretion on the administration, any promises by the latter would not be capable of giving rise to a legitimate expectation on the part of the applicants that they would be assigned a classification in grade pursuant to the old Staff Regulations.

146 Finally, the duty to have regard for the interests of officials can give rise, for an institution, to obligations towards a person only from the date of his appointment as an official.

Findings of the Court

147 The file shows that neither the competition notices nor the letters extending the validity of the lists of suitable candidates which were sent to the applicants indicated that the new criteria for classification in grade on recruitment were likely to entail a downward alteration of the grades of recruitment set out in the notices of the competitions.

148 It was only after they had taken up their duties as probationary officials that the applicants were directly informed about the new grading system introduced by the new provisions of the Staff Regulations and about the corresponding lowering of their grade of recruitment in relation to that set out in the competition notices.

149 It will also be noted in that regard that the majority of the contested decisions do not include in their cited legal bases any reference to Article 12(3) of Annex XIII to the Staff Regulations, even though the applicants' grade of recruitment was settled on the basis of that transitional provision, the character of which as *lex specialis* with respect to Article 31 of the Staff Regulations has been pointed out by the Commission itself.

150 However, although a shortage of prior information is such as to constitute an effective argument for the purpose of rendering the Community non-contractually liable towards the parties concerned, it is not in itself such as to render the contested decisions illegal.

- 151 It is settled case-law that the legality of an individual measure contested before the Community judicature must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted (Case C-449/98 P *IECC v Commission* [2001] ECR I-3875, paragraph 87, and Case T-69/03 *W v Parliament* [2004] ECR-SC I-A-153 and II-687, paragraph 28).
- 152 Since the contested decisions were all adopted with effect from 1 May 2004 at the earliest, the Commission had no choice but to classify the applicants in grade in the contested decisions in accordance with the new mandatory provisions of Article 12(3) of Annex XIII to the Staff Regulations, the illegality of which has not been demonstrated.
- 153 In those circumstances, the irregularities which the Commission is alleged by the applicants to have committed in the management of their recruitment, assuming that they were contrary to the principles invoked by the parties concerned, were not capable, on any view, of having the slightest effect on the actual legality of the classification in grade disputed by the applicants.
- 154 In particular, the fact that the Commission may, in breach of the principle of non-discrimination, have recruited, on a basis of priority, certain successful candidates on a date prior to 1 May 2004, cannot affect the legality of the contested decisions.
- 155 Even if some recruitments may thus have been given priority, the principle of equal treatment must be reconciled with the principle of legality, according to which no person may rely, in support of his claim, on an unlawful act committed in favour of another (Case 134/84 *Williams v Court of Auditors* [1985] ECR 2225, paragraph 14).

156 Accordingly, the plea must be rejected.

157 It follows from all the foregoing that the application must be dismissed in its entirety, there being therefore no need to rule on the applicants' heads of claim seeking, firstly, reconstitution of their careers and, secondly, the award of default interest on the arrears of pay which could have resulted from a judgment annulling the contested decisions.

Costs

158 Under the first subparagraph of 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.

159 Pursuant to Article 88 of the same rules, in proceedings between the Communities and their servants the institutions are to bear their own costs.

160 However, pursuant to the first subparagraph of Article 87(3) of the same rules, where the circumstances are exceptional, the Court of First Instance may order that the costs be shared.

161 In the circumstances of this case, the Court of First Instance considers that, as is apparent from the above, the Commission did not warn the applicants clearly and precisely of the foreseeable specific effect on their individual situations of a draft amendment to the Staff Regulations of which it was itself the author.

- 162 Because of the uncertainty which was thus able to continue to exist in the minds of the applicants concerning the classification in grade which they would be assigned until the contested decisions were notified, the parties concerned were entitled to believe themselves justified in disputing their classification in grade before the Community judicature.
- 163 In those circumstances, the present proceedings may be considered to have been occasioned in part by the conduct of the Commission in so far as it may, through failure to provide information, have given rise, in the minds of the persons concerned, to understandable questions about the legality of their initial grade of classification as a result of a recruitment procedure which was not free from ambiguity as regards an essential condition of engagement.
- 164 Such circumstances are exceptional circumstances justifying a sharing between the defendant institution and the applicants of the costs incurred by the latter for the purposes of the proceedings (see, to that effect, Case 26/66 *Hoogovens en Staalfabrieken v High Authority* [1967] ECR 115, 127, and Case 26/67 *Danvin v Commission* [1968] ECR 315, 323).
- 165 The Court considers it fair in the circumstances of the case to order the Commission to pay half of the costs incurred by the applicants.
- 166 In addition, Article 87(4) of the Rules of Procedure states that the institutions which intervened in the proceedings are to bear their own costs.
- 167 Accordingly, the Council must be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE
(Fourth Chamber, Extended Composition)

hereby:

- 1. Dismisses the action;**
- 2. Orders the Commission to bear its own costs and half of the costs incurred by the applicants;**
- 3. Orders the applicants to bear half of the costs incurred by them;**
- 4. Orders the Council to bear its own costs.**

Legal

Wiszniewska-Białecka

Vadapalas

Moavero Milanesi

Wahl

Delivered in open court in Luxembourg on 11 July 2007.

E. Coulon

H. Legal

Registrar

President