

**Case T-58/05**

**Isabel Clara Centeno Mediavilla and Others**

**v**

**Commission of the European Communities**

(Staff cases — Officials — Appointment — Entry into force of the new Staff Regulations — Transitional rules for classification in grade on recruitment — Article 12 of Annex XIII to the new Staff Regulations)

Judgment of the Court of First Instance (Fourth Chamber, Extended Composition), 11 July 2007 . . . . . II - 2531

**Summary of the Judgment**

1. *Officials — Staff Regulations — Regulation amending the Staff Regulations — Reporting procedure — Consultation of the Staff Regulations Committee (Staff Regulations, Art. 10, second para.; Annex XIII, Art. 12(3))*

2. *Officials — Recruitment — Appointment in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional rules for classification in grade*  
(Staff Regulations, Art. 3; Annex XIII, Art. 12(3); Council Regulation No 723/2004)
3. *Officials — Recruitment — Appointment in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional rules for classification in grade*  
(Staff Regulations, Annex XIII, Art. 12(3); Council Regulation No 723/2004)
4. *Officials — Recruitment — Appointment in grade — Appointment to the grade of the function group set out in the notice of the competition — Introduction of a new career structure by Regulation No 723/2004 — Transitional rules for classification in grade*  
(Staff Regulations, Art. 31(1); Annex XIII, Arts 2(1) and 12(3))
5. *Officials — Recruitment — Appointment in grade — Introduction of a new career structure by Regulation No 723/2004 — Transitional rules for classification in grade*  
(Staff Regulations, Art. 5; Annex XIII, Arts 4(n) and 12(2) and (3))
6. *Officials — Actions — Assessment of the lawfulness of the contested measure on the basis of the facts and law as they stood at the time when the measure was adopted*  
(Staff Regulations, Art. 91)
7. *Procedure — Costs*  
(Rules of Procedure of the Court of First Instance, Art. 87(3), first para.)

1. Under the second sentence of the second paragraph of Article 10 of the Staff Regulations in the version applicable until 30 April 2004, 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 Regula-

tions Committee. That interpretation is dictated both by the wording of the provision in question and by the role assumed by the Staff Regulations Committee.

It follows that, when amendments to a proposal for revision of the Staff Regula-

tions 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.

The character, be it substantial or specific and limited, of the amendments 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.

It follows that the substitution of the grade A\*6 for the grade A7 initially envisaged in accordance with Article 12(3) of Annex XIII to the Staff Regulations constitutes an additional element of the reform, which fits into the broad logic and overall perspective of a progressive restructuring of career structures. 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 even though the substitution 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.

(see paras 35-42)

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.

2. Regulation No 723/2004, amending the Staff Regulations and the Conditions of Employment of other servants, 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. 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.

dates 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.

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. 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.

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. 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.

(see paras 48-55)

In that regard, 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. 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 candi-

3. The general principle of equal treatment and non-discrimination requires that comparable situations are not treated differently unless differentiation is objectively justified.

In that regard, the successful candidates in the competitions who were included on the lists of suitable candidates before

1 May 2004, the date Regulation No 723/2004 entered into force amending the old Staff Regulations and the Conditions of Employment of other servants, but recruited after that date, cannot be regarded as falling within the same category of persons as the successful candidates in the same competitions who were recruited prior to 1 May 2004.

As regards the successful candidates included on the lists of suitable candidates before 1 May 2004, but appointed as probationary officials after that date, their classification in grade 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. By contrast, the successful candidates in the same competitions 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.

Since the post to which the official is appointed is itself also determined by the appointment decision 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 successful candidates who have been appointed officials, 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.

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.

(see paras 75-83, 87, 90)

4. 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.

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 must nevertheless be pointed out 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 adopted by the Community legislature for the entry into force of the new career structure for officials of the European Communities.

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.

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.

By its very nature, a transitional provision derogates from certain rules of the Staff Regulations whose application is necessarily affected by the change of system. It should be noted that the derogation provided for in Article 12(3) of Annex XIII to the Staff Regulations 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.

(see paras 108-114)

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.

5. It cannot properly be maintained that Article 5(5) of the Staff Regulations, in which the principle of equal conditions of recruitment and career development are enshrined, was infringed as a result of the classification of the successful candidates in the competitions who were recruited before 1 May 2004, the date Regulation No 723/2004 entered into

force amending the old Staff Regulations and Conditions of Employment of other servants, in the grade mentioned in the competition notices, whereas the successful candidates in the same competitions who were recruited after that date were classified in accordance with the criteria laid down by Article 12(3) of Annex XIII to the Staff Regulations.

contrary to Article 5 of the Staff Regulations be maintained. 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.

Article 12(2) 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.

At the time of the appointment of the successful candidates in the competitions 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 successful candidates recruited after that date 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.

(see paras 124-126, 129)

6. The legality of an individual measure contested before the Community judiciary must be assessed on the basis of the facts and the law as they stood at the time when the measure was adopted.

Neither can the argument that Article 12 of Annex XIII to the Staff Regulations is

As regards the decisions appointing successful candidates in competitions adopted with effect from 1 May 2004

at the earliest, the date Regulation No 723/2004 entered into force amending the old Staff Regulations and Conditions of Employment of other servants, the Commission had no choice but to classify those successful candidates in grade in accordance with the new mandatory provisions of Article 12(3) of Annex XIII to the Staff Regulations.

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.

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.

(see paras 151, 152, 154, 155)

7. Pursuant to the first subparagraph of Article 87(3) of the Rules of Procedure of the Court of First Instance, where the circumstances are exceptional, the Court of First Instance may order that the costs be shared.

The fact that the proceedings were occasioned in part by the conduct of the institution 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, constitutes exceptional circumstances justifying a sharing between the institution in question and the applicant officials of the costs incurred by the latter for the purposes of the proceedings.

(see paras 160, 163, 164)