

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Action brought on 17 March 2006 — Sequeira Wandschneider v Commission**(Case F-28/06)**

(2006/C 121/36)

*Language of the case: French***Parties***Applicant:* Paulo Sequeira Wandschneider (Brussels, Belgium)
(represented by: G. Vandersanden and C. Ronzi, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul the applicant's career development report (CDR) covering the reference period from 1 January 2004 to 31 December 2004;
- As far as necessary, annul the decision rejecting the complaint brought by the applicant on 5 September 2005;
- Order the defendant to pay damages and interest to compensate for the material and non-material loss suffered, assessed on an equitable basis, reserving the right to increase their amount to EUR 5 000;
- Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicant, a Commission official with responsibility, *inter alia*, for conducting investigations into dumping practices, challenges the validity of his CDR in respect of the 2004 appraisal exercise.

In his application, he submits that his immediate superior awarded him lower marks than he deserved, on account of his refusal to favour the interest of Community industry during his investigations.

He also argues that the procedure followed in order to compile his CDR infringes Article 43 of the Staff Regulations, the general provisions implementing that Article, the Appraisal Guide and the Internal Rules of Procedure of the Joint Evaluation Committee. The defendant also infringed the applicant's

right to a defence and his right to an effective appeal procedure.

The applicant is of the view, firstly, that his CDR is vitiated by manifest errors of assessment and a failure to state the grounds and, secondly, that the defendant has infringed the duty to have regard for the welfare of officials and the duty of sound administration.

Lastly, the applicant alleges a misuse of powers, inasmuch as the appraisal of his performance as unsatisfactory is simply a means of attempting to remove him from his position as an investigator.

Action brought on 13 March 2006 — Arnaldos Rosauro and Others v Commission**(Case F-29/06)**

(2006/C 121/37)

*Language of the case: French***Parties***Applicants:* Andres Arnaldos Rosauro and Others (represented by: S. Rodrigues and A. Jaume, lawyers)*Defendant:* Commission of the European Communities**Form of order sought**

- Annul the applicants' instruments of appointment, taken together with the remuneration slips which they have received since the date of their advancement from category C to category B, in that the slips appoint them in grade B*3/B*4 and retain their basic salary as it was before the change of category through the application of a multiplier;
- Annul the decision of the Appointing Authority to remove the applicants' promotion points ('rucksack') following their advancement from category C to category B;

- Inform the Appointing Authority of the consequences of those annulments, that is to say, with retroactive effect from the day of their advancement from category C to category B: (1) the appointment of the applicants in grade B*5/B*6 under Article 2 of Annex XIII to the Staff Regulations, (2) the payment to them of the basic salary to which they are entitled under the Article 2(2) of Annex XIII to the Staff Regulations without a multiplier, (3) their retention, after their advancement to category B, of the merit points and transitional points which they accumulated when they were employed in category C;
- Order the Commission of the European Communities to pay the costs.

Pleas in law and main arguments

The applicants are all successful candidates of the internal competition for change of category COM/PB/04, the notice for which was published before the date when the new Staff Regulations entered into force. After that date, they were appointed by the defendant to the higher category but, because of the application of a multiplier, that did not entail an increase in

their remuneration. In addition, their promotion points were re-set at zero.

In their action, the applicants submit three complaints, the first of which is that their appointment to grade B*3/B*4 is unlawful to the extent that the equivalent grades to those referred to in the competition notice are the grades B*5/B*6, in accordance with Article 2 of Annex XIII to the Staff Regulations.

So far as the second complaint is concerned, the applicants argue that the application of a multiplier to their remuneration is contrary to, on the one hand, the Staff Regulations, which make no mention of the application of such a factor in this instance, and, on the other hand, the principle of non-discrimination, the principle of the protection of legitimate expectations and the principle of acquired rights.

Lastly, as regards the third complaint, the applicants maintain that the cancellation of their promotion points is contrary to the spirit of Article 45a of the Staff Regulations and Article 5 of Annex XIII to the Staff Regulations, and the principle of equal treatment.