

Case C-389/98 P

Hans Gevaert

v

Commission of the European Communities

(Appeal — Officials — Request for review of classification in grade —
Action — Expiry of time-limits — New fact — Equal treatment)

Opinion of Advocate General Léger delivered on 28 March 1999	I-	67
Judgment of the Court (Fifth Chamber), 11 January 2001	I-	81

Summary of the Judgment

1. *Officials — Actions — Prior administrative complaint — Time-limits — Time-bar — Re-opening of prescribed period — Condition — New fact — Decision altering the criteria for classification in grade on recruitment*
(Staff Regulations, Arts 31(2), 90 and 91)
2. *Officials — Equal treatment — Recruitment — Classification in grade — Reconsideration — Right to request a reconsideration restricted to officials recruited after delivery of the judgment of 5 October 1995 in Case T-17/95 — Lack of objective justification*
(Staff Regulations, Art. 5(3))

1. The Commission's decision of 7 February 1996 altering the criteria for classification in grade of officials recruited after 5 October 1995 must be regarded as a decision of general application which called in question a number of administrative decisions which had become final and thereby constituted a new fact liable to have an adverse effect on officials recruited before 5 October 1995 and allowing them to submit a request, within the periods prescribed in Articles 90 and 91 of the Staff Regulations, for a review of their classification.

(see para. 49)

2. The decision of 7 February 1996, adopted following the judgment of 5 October 1995 in Case T-17/95 *Alexopoulou*, and altering the criteria for classification in grade of officials recruited after 5 October 1995, infringed the general principle of equal treatment laid down in Article 5(3) of the Staff Regulations, since the difference in treatment resulting from the fact that Commission officials

appointed after 5 October 1995 could request that their classification in grade be reconsidered while those who had been appointed before that date could not, is not objectively justified by the fact that 5 October 1995 was the date of delivery of that judgment.

For the purpose of complying with that judgment, it was not necessary, as regards officials who were not parties to the proceedings, to take 5 October 1995 as the date on which the decision of 7 February 1996 was to take effect. Furthermore, although, in adopting that decision, the Commission displayed a regard for the welfare of officials who had been appointed after 5 October 1995 and had not challenged the classification decision within the prescribed period, there is nothing to justify, or even explain, why it did not extend that concern to officials who had been appointed between 1983 and 5 October 1995 and were in the same situation.

(see paras 55-57)