



Reports of Cases

Case T-639/16 P

FV

v

Council of the European Union

(Appeal — Civil service — Officials — Appraisal — Career evaluation report — Appraisal year 2013 — Dismissal of the action at first instance — Composition of the Chamber which delivered the judgment at first instance — Procedure for the appointment of a judge to the Civil Service Tribunal — Tribunal established by law — Principle of the lawful judge)

Summary — Judgment of the General Court (Appeal Chamber), 23 January 2018

1. *Civil Service Tribunal — Procedure for the appointment of a judge to that tribunal — Council's margin of discretion — Limits — Compliance with the conditions laid down by the public call for applications and the rules of procedure adopted for the exercise of the discretion*

(Art. 257, fourth para., TFEU; Statute of the Court of Justice, Annex I, Arts 2(1), third para. and 3(1),(2) and (4))

2. *EU law — Principles — Fundamental rights — Compliance ensured by the EU judicature — Taking into consideration the European Convention on Human Rights — Principle of the lawful judge — Irregularity in the procedure for the appointment of a judge to the Civil Service Tribunal — Infringement of the said principle*

(Art. 6(1) TEU; Charter of Fundamental Rights of the European Union, Arts 47, second para. and 52(3) and (7))

1. See the text of the decision.

(see paras 40-47, 53-55)

2. In an appeal, when the proper constitution of the court which delivered the judgment at first instance is contested and the challenge is not manifestly devoid of merit, the appeal court is required to verify that the court was properly constituted. A ground alleging the irregular constitution of the panel of judges is a ground involving a question of public policy, which must be examined by the appeal court of its own motion, even if this irregularity was not invoked at first instance.

As is apparent from the first sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union, one of the requirements concerning the composition of the Chamber is that courts must be independent, impartial and previously established by law.

The principle of the lawful judge, the objective of which is to guarantee the independence of judicial power with respect to the executive, stems from that requirement, which must be interpreted as meaning that the composition of the court and its jurisdiction must be regulated beforehand by legal provisions.

Under the first sentence of Article 52(3) of the Charter of Fundamental Rights, in so far as the Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms ('the ECHR'), their meaning and scope are to be the same as those laid down by that convention.

Under the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter of Fundamental Rights, when interpreting the rights set out in that charter, the explanations drawn up as a way of providing guidance in its interpretation are to be given due regard by the European Union judicature.

It follows that, as regards the interpretation of the first sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights, account should be taken of the guarantee afforded by the first sentence of Article 6(1) of the ECHR, which also lays down the principle of the lawful judge.

Having regard to the importance of compliance with the rules governing the appointment of a judge for the confidence of litigants and the public in the independence and impartiality of the courts, since the Council deliberately disregarded the legal framework laid down by the public call for applications and the rules governing the appointment of judges to the Civil Service Tribunal, the judge appointed in breach of those rules cannot be regarded as a lawful judge within the meaning of the first sentence of the second paragraph of Article 47 of the Charter of Fundamental Rights.

(see paras 66-71, 77, 78)